

Designating More than One Matrimonial Home



By Brian Madigan LL.B.

Properties that qualify as matrimonial homes should ordinarily be presumed to be such unless there is good evidence to the contrary.

Although it occurs infrequently, questions often arise about matrimonial home designations. However, it is important to remember that a home does not have to be designated to be a matrimonial home.

Let's assume a husband and wife own 6 properties

- 1) is owned by the husband (a cottage)
- 2) is owned by the husband (a boat)
- 3) is owned by the wife (the main house)
- 4) is owned by the wife (the farm)
- 5) is owned by the husband and wife as joint tenants (a ski chalet)
- 6) is owned by the husband and wife as tenants in common (a time share in Florida)

As long as the marriage is going well, the status quo will remain intact.

If the relationship goes poorly, then, the wife may wish to designate the cottage and the husband's boat as matrimonial homes. She owns the main house and the farm, so there's no point designating them, and she has a registered interest in the ski chalet and the time share, so there's no point with any designations there.

When we look at the same facts, from the husband's perspective the only advantage would be to designate the main house and the farm. He owns half or all of the other properties already.

Either the husband or wife may designate properties as matrimonial homes. The advantage secured is that the property requires spousal consent for conveyance.

Now, we come to the next stage in the events; a possible settlement:

- 1) the husband will keep the cottage
- 2) the husband will keep the boat
- 3) the wife will sell the main house, and they will divide the proceeds
- 4) the wife will sell the farm, and they will divide the proceeds
- 5) the wife will get the ski chalet
- 6) the wife will get the time share in Florida

Both parties will file a joint designation that the main house and the farm are matrimonial homes. This has the immediate effect of freeing up the other properties. They can be dealt with either by way of sale or mortgage by the respective parties.

The two big ticket items are to be sold. Both parties agree. Although they were both registered only in the name of the wife, the husband's signature will be required as a spousal consent.

Both parties can have more than one designated matrimonial home.

The purpose of designation:

- By one party is to give notice that the property is a matrimonial home,
- By both parties is to give notice that other properties are not matrimonial homes.

In reality, this designation rarely if ever takes place. Usually, both parties would just agree to sell, then they would do it. However, if it were to take a prolonged period of time, then this sort of designation that is available under the Family Law Act could be advantageous.

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