

Property division: Married couples

When you and your spouse separate or divorce, or when your spouse dies, the way property is divided depends on whether you were married or in a common-law relationship.

Married means you had a marriage ceremony performed by someone with the legal power to marry you, like a judge, justice of the peace, or religious official.

Couples who live together as partners, but have not legally married, are sometimes said to be living “common-law”.

To learn about property division for common-law couples, read [Property division: Common-law couples](#).

What is property?

Property is everything you own, for example, your:

- home and other real estate
- car and other vehicles
- personal items, such as clothing, jewellery, and artwork
- household items, such as furniture, appliances, and electronic equipment
- financial assets, such as bank accounts, RRSPs, investments, insurance policies, and pensions
- businesses

How to divide property if you separate

When a married couple separates, each spouse usually keeps the property they own. But, they have to share any **increase** in the value of that property that happened during their marriage.

This means that the spouse who has more property usually pays money to the spouse who has less property. This is called an **equalization payment**.

In most cases, the time limit to make a claim for an equalization payment is **6 years** after you separate or **2 years** after you get a divorce, whichever is sooner.

Equalization payment

To calculate an equalization payment, each spouse must first calculate their **net family property** (NFP).

In most cases, to calculate their NFP, each spouse adds up the value of their property less any debts on the day the relationship ended or their spouse died. From this, they subtract the value of their property less any debts on the day they were married.

If you own property jointly, include half the value of that property in your NFP. Your spouse includes the other half in their NFP.

If your NFP is a negative amount, your NFP is considered to be zero.

The spouse with the **higher NFP** then pays the other spouse half of the difference. This is the equalization payment.

For more detailed information, visit stepstojustice.ca/equalization-payment.

In rare situations where dividing property equally would be unfair, you can agree to divide property unequally. Or, you can go to court.

Special rules

Some assets or debts are treated differently when calculating your NFP. For example, some **gifts and inheritances** are not included. And all **Canada Pension Plan credits** earned while you were together are always added up and divided equally, if you were together for at least one year.

There are also special rules about your **matrimonial home**. A matrimonial home is a home that you and your spouse lived in just before you separated.

If one spouse owned the matrimonial home on the date of marriage and on the date of separation, they have to add the total value of the matrimonial home less any debts on the date of separation.

This means that the home's **total value** is shared in the equalization payment, not just the change in its value during the marriage. This can have a big effect on the amount of the equalization payment.

Different rules apply to matrimonial homes on reserve land.

Right to stay in the family home

You and your spouse have an **equal right** to stay in your matrimonial home in Ontario if you separate. This applies even if only one of you own it or rented it. This right lasts until one of the following happens:

- You and your spouse make an agreement that says who cannot live there.

- There is a court order that says who cannot live there.
- You sell your matrimonial home or your lease ends.
- You get divorced.

You cannot sell or mortgage the matrimonial home without your spouse's written permission.

Debts

Each spouse is usually responsible for their own debts, unless there is an agreement that says something else.

But if both spouses signed a loan agreement, either spouse can be responsible for the entire debt.

Written agreements

If you and your spouse want to share your property differently, you can make a **marriage contract**. This is also called a **domestic contract**.

In the agreement, you can say how you want to arrange your finances during your relationship and how you want to deal with your property and debts if you separate.

If you and your spouse have already separated but agree on how to divide property you can make a **separation agreement**.

You do not need a lawyer to make an agreement. But it is a good idea to get legal advice before signing one. You and your spouse cannot get advice from the same lawyer.

If you cannot agree on how to divide property, you can get help from a **family law professional**. These are neutral people who are trained to work with both of you to help you reach an agreement or decide for you.

Or, one of you must start a family law court case and ask a judge to decide.

If your spouse dies

If your spouse dies leaving a valid will, you can choose to get either an equalization payment or what was left to you in their will.

If your spouse dies without leaving a valid will, you can choose to get an equalization payment or your share according to the **intestacy rules**. These rules give married spouses and children the right to inherit property when there is no valid will.

In both situations, you must usually take legal steps within **6 months** of your spouse's death if you want to claim the equalization payment.

Joint property

If your spouse dies, you usually become the sole owner of any money or property that you both owned jointly. Joint property is not affected by a will or the intestacy rules.

You also inherit life insurance money and registered investments if those assets list you as a **beneficiary**.

Other benefits

There are some **government benefits** like CPP survivor's pension and CPP funeral and death expenses that you may be able to get if your spouse dies.

In Ontario, you may be able to get other payments that depend on the cause of your spouse's death. If your spouse was killed while working, you can apply for workers' compensation benefits.

More information and legal help

Visit stepstojustice.ca/family-law for more information. CLEO also has other family law publications at family.cleo.on.ca.

For help finding a lawyer or a mediator, see the publication **Family Law: Legal Help**. It also has information on where to get help if you cannot afford the fees.

For help filling out family court forms, see CLEO's **Family Law Guided Pathways**.



Visit stepstojustice.ca/family-law for more about family law and legal help. This is general information for people in Ontario, Canada. It is not legal advice.

Cette publication est également disponible en français.

Vous pourriez avoir droit à des services en français du gouvernement et des fournisseurs désignés. Visitez justicepasapas.ca/droits-linguistiques-francophones.