



| Family Law Series

**Separation and Divorce or
Death of a Spouse**

Property Division



March 2021

If you speak French

In many cases you have the right to government services and legal proceedings in French, including hearings before French-speaking decision-makers.

If you have a legal problem, you can ask a lawyer or a community legal clinic about your French language rights.

Si vous parlez français

Il existe de nombreuses situations où vous avez droit à des services gouvernementaux et à des procédures juridiques en français. Ainsi, vous pouvez avoir droit à ce qu'une audience à laquelle vous êtes partie soit tenue devant un décideur qui parle français.

Si vous avez un problème juridique, vous pouvez demander à un avocat ou à un intervenant d'une clinique juridique communautaire de vous informer des droits linguistiques liés au fait de parler français.

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III Married or common-law – does it make a difference?

When couples separate, the way they have to divide their property depends on whether they were legally married or in a common-law relationship.

The reason why a couple decides to separate does not affect how they divide their property.

In this booklet, “married” means a couple who had a legally recognized marriage. This means they had a marriage ceremony performed by someone with the legal power to marry them, for example, a judge, justice of the peace, or religious official.

Couples who live together as spouses, but have not legally married each other, are sometimes said to be living “common-law”. Living together for many years, having children together, or referring to each other as “husband”, “wife”, or “spouse” does not make these couples legally married to each other.

For family law issues like spousal support, child support, decision-making responsibility, and parenting time, it does not matter if you and your spouse were legally married or living common-law. The rules are the same.

Decision-making responsibility and parenting time used to be called custody and access.

But the rules are different for other issues like:

- dividing property
- who can stay in or sell the family home
- dividing property in your spouse's will

For these issues, being married or common-law makes a difference. For example, married couples automatically share the value of their property if they separate or if one spouse dies. This is not true for common-law couples.

III 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
- bank accounts, RRSPs, investments, insurance policies, pensions, and other financial assets
- businesses

III Property division for married couples

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

This means that one spouse must usually give the other spouse an **equalization payment**. The next section explains how to calculate 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

There are 2 main steps to calculate an equalization payment:


Step 1:

Each spouse must calculate their individual **net family property** (NFP). To do this, each spouse adds up the value of their property less any debts on the date of separation. From this, they subtract the value of their property less any debts on the date of marriage.

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

Here is an example:

How to calculate net family property (NFP)

	Spouse A Value of assets minus debts
Now (separation date)	\$100,000
Then (marriage date)	<u>-\$20,000</u>
Now minus Then	\$80,000
So NFP for Spouse A is \$80,000	



	Spouse B Value of assets minus debts
Now (separation date)	\$55,000
Then (marriage date)	<u>-\$25,000</u>
Now minus Then	\$30,000
So NFP for Spouse B is \$30,000	

Note: If a spouse's NFP is a negative amount, their NFP is considered to be zero.

Step 2:

The spouse with the higher NFP then pays the other spouse half of the difference. This is the equalization payment. Here is an example:

How to calculate an equalization payment

	Spouse A net family property	\$80,000
	Spouse B net family property	- \$30,000
	Spouse A minus Spouse B	<u>\$50,000</u>
	\$50,000 divided in half = \$25,000	
	Equalization payment:	
	Spouse A pays \$25,000 to Spouse B	

In rare situations where dividing property equally would be unfair, spouses can agree to divide property unequally. Or, a court might order it.

Special rule for matrimonial homes

A “matrimonial home” is a home that a married couple lived in just before they separated. There can be more than one matrimonial home, for example, a house and a cottage. A matrimonial home can be owned or rented.

If one spouse owns the matrimonial home on the date of marriage **and** on the date of separation, they do **not** include the home's value or any debts related to the home on the date of marriage. But they have to add the 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.

Special rule for gifts and inheritances

Any gift or inheritance that a spouse got during the marriage is not usually included in their NFP calculation as long as the spouse has the gift or inheritance at the end of the marriage. But if the gift or inheritance was used to buy or help pay for a matrimonial home, it is included in their NFP.

Special rule for Canada Pension Plan credits

These credits are not included in the NFP calculation because they are divided separately. See **Canada Pension Plan credits** on [page 11](#) to find out how to divide these credits.

III **Property division for common-law couples**

The rules about dividing property, including a matrimonial home, do not apply to common-law couples. If you are in a common-law relationship, the property you bring into the relationship, plus any increase in its value, usually continues to belong to you alone. If you and your spouse separate, there is no automatic right to divide it or share its value.

Anything you buy for yourself with your own money during the relationship and own in your name usually belongs only to you.

Things that you and your spouse buy together during the relationship belong to you both jointly. If you separate, the things you own jointly are divided or their value is shared.

It is a good idea to keep receipts of what you buy. Later, if you and your spouse do not agree on who owns something that you paid for, you have proof to show it belongs to you.

Unjust enrichment

If you contributed financially or in some other way to your spouse's property, you might be able to claim a share of that property. For example, you might have done unpaid work at home so your spouse could do

paid work, or you might have worked without pay in a family business.

A court can look at whether your spouse was “unjustly enriched” at your expense. But this can be hard to prove.

If the court gives you a share of your spouse’s property, the size of the share may depend on how much you contributed or on how much your contribution increased the value of your spouse’s property.

Rule for Canada Pension Plan credits

You can divide Canada Pension Plan credits that were earned while you were living with your spouse if you lived together for at least one year. See **Canada Pension Plan credits** on [page 11](#) for more information.

III The family home

The rules about who gets to stay in the family home, and who can sell it, depend on whether a couple was legally married or living common-law.

Married couples

Each married spouse has an equal right to stay in their matrimonial home if it is in Ontario. This applies even if the property’s legal title is only in one of their names or

if the property is rented. This right lasts until one of the following happens:

- They make an agreement that says one of them cannot live there.
- There is a court order that says one of them cannot live there.
- They sell their matrimonial home or their lease ends.
- They get divorced.

Neither spouse can sell or mortgage the matrimonial home without the other spouse's written permission.

Common-law couples

The rules for matrimonial homes do not apply to common-law spouses. A common-law spouse does not automatically have the right to stay in the family home if it is not in their name. If one common-law spouse owns the home, they can sell or mortgage it without the other spouse's permission.

III Debts

In both married and common-law relationships, each spouse is usually responsible for only their own debts, unless there is an agreement saying who is responsible for which debts.

But if both spouses signed a loan agreement, either spouse can be responsible for the entire debt. This means if one spouse does not pay back the loan, the other spouse has to pay it back even if they did not benefit from it. This is true for any 2 people who sign a loan together, whether or not they are spouses.

When married couples separate their debts are taken into account when calculating each spouse's NFP. See **Equalization** on [page 3](#) to learn how to calculate NFP.

III Written agreements

If you and your spouse want to share your property differently if your relationship ends, you can make an agreement.

The agreement is called a "cohabitation agreement" if you are living common-law, or a "marriage contract" if you are legally married. These types of agreements are called domestic contracts or domestic agreements.

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.

Before signing a domestic contract, you and your spouse should each:

- understand the agreement

- review the agreement with your own lawyer
- make a complete and detailed list of all your assets and debts

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

Usually the courts will not change or cancel a domestic contract just because one spouse wants to change it. But in some cases a court might do this if, for example, a spouse:

- did not tell the truth about their finances,
- was not able to understand the agreement, or
- was under a lot of pressure to sign the agreement.

III **Canada Pension Plan credits**

The Canada Pension Plan (CPP) is a pension plan that most workers and employers contribute to. You earn CPP credits based on what you and your employer contributed to the plan. When you retire or can't work because of a disability, you can apply to get your pension. The amount you get depends on your CPP credits or how much you contributed.

If married or common-law spouses lived together for at least one year, the CPP pension credits that they both earned while they were together can be added up and then divided evenly between them if they separate. This is sometimes called a credit split or a “Division of Unadjusted Pensionable Earnings” (DUPE). If you earned less than your spouse, this may help you qualify for a pension. Or, it might increase the amount of your pension if you already qualify.

Usually there is no time limit to apply for a DUPE if you were legally married. But if your spouse died after you separated and you did not get divorced, you must apply within 3 years of their death.

If you were in a common-law relationship, you must apply within 4 years of separating unless both of you agree in writing to remove this time limit. Also, you must wait until you have been separated for at least one year, unless your spouse died in that first year after you separated.

To apply, contact Service Canada at **1-800-277-9914**. You can also apply online at www.canada.ca.

III What happens to property if my spouse dies?

What happens to your spouse’s property after they die depends on whether they had a valid will. A will is a

written legal document that says who gets a person's property after that person dies.

To be valid, your spouse must have followed certain rules when making their will. For example, the rules say that they must usually sign their will in front of 2 witnesses.

If your spouse has a legal responsibility to support a child, a former spouse, or other dependants, they must leave enough to take care of them in their will. If they do not, their dependents can go to court and ask for the will to be changed to give them support. This is called making a dependant's support claim.

There are legal rules, called "intestacy" rules, that say who gets your spouse's property if they do not have a valid will. The rules are different for married and common-law couples.

Inheritance: Married spouses

If you are married and 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. See pages 3-6 for more information on how to calculate an equalization payment.

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.

Inheritance: Common-law spouses

Common-law spouses do not inherit any of their spouse's property unless it was left to them in a valid will. If your common-law spouse dies without leaving a valid will, the intestacy rules give their property to their children or other relatives, not to you. So if you are in a common-law relationship, each of you must make a will if you want each other to inherit your property when you die.

Joint property

If your spouse dies, you usually become the sole owner of any money or property that you both owned jointly. This is true for both married and common-law couples.

For example, you usually have the right to all the money in any joint bank account and you become the sole owner of any real estate that the two of you held in "joint tenancy". This is not affected by a will or the intestacy rules.

In the same way, you would also inherit life insurance money and registered investments if those assets list you as a “beneficiary”.

Other benefits

There are some government benefits that you may be able to get if your spouse dies.

CPP survivor’s pension

If your spouse made enough contributions, you may be able to get a survivor’s pension under the Canada Pension Plan (CPP). This is a monthly payment. You may qualify if, at the time of your spouse’s death:

- you were legally married to them or you had been living with them for at least one year, and
- you were at least 35 years old, but you can be younger if you have a disability or have dependent children living with you.

There is no time limit to apply. CPP will give you benefits for the months dating back to your spouse’s death, but they will not go back more than one year before the date you apply.

CPP funeral and death expenses

If your spouse contributed to CPP, the plan also offers a one-time payment to help pay funeral and other costs

related to your spouse's death. This is called a "death benefit". The payment goes to the person or people who pay those costs. This might be you, another relative, or the person who handles the estate.

To apply, contact Service Canada at **1-800-277-9914**. You can also apply online at www.canada.ca.

Compensation benefits

Under Ontario law, 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. If they died as a result of someone else's criminal act, you may be able to apply for criminal injuries compensation. Each type of compensation has different rules about who can qualify.

To find out more about workers' compensation benefits, contact the Workplace Safety and Insurance Board (WSIB) at **1-800-387-0750** or **416-344-1000** in the Toronto area. Or you can visit their website at www.wsib.on.ca.

To find out more about criminal injuries compensation, contact the Criminal Injuries Compensation Board (CICB) at **1-800-372-7463** or **416-326-2900** in the Toronto area. Or you can visit their website at www.sjto.gov.on.ca/cicb.

III Finding a lawyer

Law Society of Ontario

The Law Society of Ontario (LSO) has a directory of all lawyers who can practise law in Ontario. Make sure the lawyer you hire has experience with family law. The Law Society also has a Directory of Certified Specialists who focus on family law.

Visit the Law Society website at www.lso.ca, click on “Public Resources” at the top, and then on “Find a Lawyer or Paralegal”. You can also call them at:

Toll-free **1-800-668-7380**

Toronto area **416-947-3300**

The **Law Society Referral Service** is an online service that gives you the name of a lawyer in your area who can give you a free consultation for up to 30 minutes. You can ask for a lawyer who speaks your language, or a lawyer who accepts Legal Aid certificates. For more information on Legal Aid certificates, see **What if I cannot afford a lawyer?** on [page 19](#).

You can also call them on their crisis line if you cannot use the online service, for example, if you are in custody, in a shelter, or in a remote community without access to the internet. This line is available from Monday to Friday, 9 a.m. to 5 p.m.

Visit www.findlegalhelp.ca or call:

Toll-free Crisis Line **1-855-947-5255**

Toronto area Crisis Line **416-947-5255**

Legal Aid Ontario

Legal Aid Ontario also offers a searchable directory of lawyers. You can search for family law lawyers by location and language. Visit www.legalaid.on.ca/lawyers and click on “Finding a lawyer”.

III Getting more information

Family Law Information Centres (FLICs)

The Ministry of the Attorney General has a Family Law Information Centre (FLIC) in every courthouse that deals with family law. All FLICs have free pamphlets. Many FLICs have staff who can give information and refer you to community agencies and legal services. To find a FLIC in your area visit the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca.

Advice Lawyers

At FLICs, advice lawyers from Legal Aid Ontario are available at certain times to answer questions, give general legal advice, and review legal documents on

family law issues. Contact your local FLIC to find out when the advice lawyer is available.

III What if I cannot afford a lawyer?

You may be able to get help from Legal Aid Ontario (LAO). LAO helps people with a **low income** get legal assistance through a range of services. Your income must be low enough to get most of these services. Call LAO to find out if you are eligible.

Visit www.legalaid.on.ca or call them at:

Toll-free	1-800-668-8258
Bell Relay Service	1-800-855-0511
Toronto area	416-979-1446
(accepts collect calls)	

Some of the services LAO offers are:

Family Law Service Centres

At Family Law Service Centres, you can get help with documents, get a lawyer to represent you, and get referrals to other types of services. These centres are located in several places in Ontario.

Family Law Offices

There are Family Law Offices in Kenora, Ottawa, and Thunder Bay that can help with some family law issues

like decision-making responsibility, parenting time, support, child protection, and restraining orders.

Family duty counsel

Family duty counsel may be able to give you advice about family law issues and basic court process, help negotiate a settlement, and help you in court. But they cannot represent you at trial. Most courts in Ontario have these services.

General legal advice

You may be able to get free advice about your family law issue from a lawyer for up to 20 minutes. This service is only given over the phone.

Certificate program

You can apply to LAO for a certificate to cover the cost of a lawyer to represent you for a certain number of hours.

You may also be able to get certificates for other situations such as family violence, child protection, or complex family law cases.

Faster certificates for victims of family violence

If you are a victim of family violence and let LAO know this when you call them, you are placed in a priority

line for help with applying for a certificate. In urgent cases, you may be able to apply in person and get a certificate, possibly on the same day you apply.

Law school clinics

Each law school in Ontario has a legal aid clinic staffed by law students who are supervised by lawyers. These clinics are located in Kingston, London, Ottawa, Thunder Bay, Toronto, and Windsor.

Law school clinics can help with issues about your children. Some of them can also help with other family law issues such as property division and spousal support.

III Other information and resources

Community Legal Education Ontario (CLEO)

CLEO has a series of family law information resources available online and in print. Topics in the series include child support, making decisions and spending time with children, spousal support, and property division. To order these publications or view them online, visit www.family.cleo.on.ca or call **416-408-4420**.

CLEO's **Steps in a Family Law Case** has 3 interactive flowcharts that help people understand and work through the family law court process. Visit www.familycourt.cleo.on.ca.

CLEO's **Steps to Justice** is a website that gives step-by-step information about common legal problems, including family law issues. Steps to Justice has practical tools like forms and checklists, and referral information for legal and social services. Visit www.stepstojustice.ca.

CLEO's **Family Law Guided Pathways** are a series of online interviews that help you fill out the court forms you need for family law matters. The pathways ask you questions and then put your answers into the required court forms. The pathways are free to use. Visit www.stepstojustice.ca/guided-pathways.

Ontario government family law website

The Ministry of the Attorney General has information on many family law issues at www.attorneygeneral.jus.gov.on.ca/english/family. The site also has information about the family court process and a publication in 9 different languages called **What you should know about Family Law in Ontario**.

Family Law Education for Women website

This website provides online resources on women's rights under Ontario family law. These are available in 14 languages and in multiple formats. Visit www.onefamilylaw.ca.

Ontario court websites

Two of Ontario's family courts have information about their court process. Go to the Ontario Court of Justice website at www.ontariocourts.ca/ocj and search for **Representing Yourself at Your Family Law Trial – A Guide**. Go to the Superior Court of Justice website at www.ontariocourts.ca/scj and search for **A Guide to Process for Cases at the Superior Court of Justice**.

This booklet gives only general information. You should get legal advice about your own situation.

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CLEO has more free publications on Family Law and other legal topics. We revise our publications regularly to reflect changes in the law. Our Discard List tells you which publications are out of date and should be thrown away.

For our Discard List, or to order or view our publications online, visit www.cleo.on.ca. You can reach us by phone at **416-408-4420**.

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