EQUALIZATION PAYMENT

What is an equalization payment?

In Ontario, the *Family Law Act* governs the property rights of parties to a separation and divorce. However, in situations involving separation there is no physical division of property; instead, ownership of the property is left in the hands of one spouse, with the other spouse receiving a monetary payment in compensation. This is known as the equalization payment. The amount of the equalization payment is calculated using a number of factors, but the main governing principle is this: When a marriage ends, the equal contribution of each person to the marriage is recognized. The person whose net asset value has increased most during the marriage should pay to the other so that they each end up with assets of equal value for the period of their marriage. Accordingly, the law provides that the value of any kind of property that was acquired by a spouse during the marriage and still exists at separation must be divided equally between the spouses.

How is an equalization payment calculated?

Basically, an economic snapshot is taken of the value of the assets owned by each party on the date of the marriage, and again on the date of their separation (the "valuation date"). Everything is counted and valued as at each of those two dates, including the current value of each spouse's records and books, vehicles, bank debt, student loans, etc. For example, let's say you got married in 1998, and at the time you owned a 1994 BMW, a rare coin collection, a 2-year old computer, and coffee table. If you and your spouse separate in 2012, the first step is to determine the value of each of those items on your marriage date in 1998. Next, if you still own those assets on the separation date in 2012, the value on that date must be ascertained. In this example, the computer and the coffee table are probably gone by the separation date, but the BMW may still be around. However, while you may have purchased it for $20,000, it might only have a current retail value of $2,000 dollars. However, the coin collection you originally bought for $200 dollars might now be valued at $800 dollars in 2012. Therefore, you would enter the BMW at a current value of $2,000 and the coin collection at $800 for the valuation (separation) date values.

For each spouse a balance sheet of assets / property as at the valuation date is created. These assets are then totaled up. From this figure the value of each spouse's debts and liabilities is subtracted, and the resultant sum is a spouse's "**Net Family Property**." The difference between the "Net Family Property" values of each spouse is then calculated and the spouse with the higher "Net Family Property" pays to the spouse with the lower "Net Family Property" one half of the difference. This payment is referred to as the "**equalization payment**."

Once the first spouse has calculated the value of those items brought into the marriage (less any debts), that figure is subtracted from the value of those items owned by him or her on the separation date, unless they were obtained during marriage as a gift or inheritance (after subtracting the valuation date debts). The resulting total is the first spouse's Net Family Property (NFP). The second spouse's assets and debts are dealt with in the same manner to figure out his or her NFP. Then the lower NFP is deducted from the higher one, and the difference is divided in half. That figure is the amount of the equalization payment because, once it is paid by the richer to the poorer party, they will each end up having assets of the same value. (One might still have more assets than the other because of the reasons mentioned next.)

This is complicated by the fact that there are certain items which are excluded from the calculations. For example, the value at separation date of any inheritance or gift received by a party after marriage is excluded from his or her NFP. If one spouse inherited $10,000 from her great aunt a few years before separating and spent it on a vacation or paid off the mortgage, none of it is left at separation and there is nothing to value or exclude. But if that same money was put into a separate bank account, used to buy a painting or to invest in stocks, then the value of the bank account, painting or stocks on the separation date can be excluded. Sometimes the amount of the exclusion is greater than the value of the gift or inheritance when it was received, because it has increased in value in the interim. There are other exclusions to keep in mind, as well as special rules setting out when deductions on the value of the matrimonial home can be taken by one of the spouses. Because these deductions and exclusions have an important impact on any equalization payment, it is vital to contact a knowledgeable family law lawyer to be clear about the corresponding rights and entitlements.

What is a matrimonial home? And how is it treated in the Equalization Calculation?

Under the Ontario *Family Law Act* a matrimonial home is any property in which a person has an interest and that was ordinarily occupied by the person and his or her spouse as their family residence at the time of their separation. There can be more than one matrimonial home: a summer cottage, ski chalet, condo in Florida or time share unit used for vacations, etc. may qualify in the right circumstances.

The matrimonial home in Ontario qualifies for special treatment in two ways. Firstly, regardless as to whose name it is in, both spouses have equal rights to the possession of the matrimonial home. That right continues until the parties are no longer spouses or until there is a court order or agreement providing otherwise. No one can "throw out" the other spouse just because the "thrower" owns the house.

Secondly, if a home is a matrimonial home at the date of separation and was the same home lived in at the date of marriage (perhaps it was owned by one of the parties and the other moved in before or at marriage, or it was purchased to be the new family's first home by one of the parties) then the owner cannot deduct its marriage date value when calculating his or her Net Family Property. The value of the home on the valuation date is included as an asset but without any corresponding deduction.

Parties with substantial assets, when faced with divorce or separation, should always consult a lawyer to have a clear understanding of all their options and legal rights. Please feel free to consult the ***Balasunderam Law Office*** if you are in a situation where divorce or separation is likely possibilities.