

Family Law Questions and Answers

You're married

1. What are your property rights if you and your spouse separate?
 - You are entitled to seek an equalization of net family properties (NFP) under the *Family Law Act* – See calculations
2. What are your property rights if your spouse dies?
 - You have a choice between an equalization of NFP or what has been left to you under your spouse's estate plan
3. What are your support rights/obligations if you and your spouse separate?
 - You are obligated to support yourself and then your spouse if he/she needs it
 - You are entitled to support from your spouse to the extent that you need support and your spouse is able to pay
 - Support is calculated with reference to the *Spousal Support Advisory Guidelines* based on the difference in your gross incomes and the length of your marriage

You're living with someone but not married

1. What are your property rights if you and your spouse separate?
 - Property is divided based solely on ownership or direct contribution to specific property
2. What are your property rights if your spouse dies?
 - You receive only whatever is left to you under your spouse's estate plan
3. What are your support rights/obligations if you and your spouse separate?
 - You have the same rights/obligations as a married spouse if you have cohabited continuously for a period of not less than three years, or in a relationship of some permanence, if you are the parents of a child

You're thinking of getting married

1. What can you do to protect yourself in case you and your spouse separate?
 - Enter into a marriage contract
 - Without a marriage contract, don't buy a home until after you are married.

Your son/daughter is married/getting married

1. What things should you consider before giving him/her a gift?
 - Generally speaking, wait until after the wedding to give the gift, but see below.
 - Don't give a home to your child during his/her marriage.
 - If you give your child something else, tell your child not to use your gift to buy a home.
 - If you want to help your child buy a house give your child money before the wedding and advise your child not to buy the home until after the wedding!
2. What are your custody/access rights to your grandchildren?
 - You may apply for custody or access.
 - The application is decided on the basis of the best interests of the child.
 - You must prove that you have an existing relationship.

Relevant Sections of the *Family Law Act*

Purpose

Section 5 (7) The purpose of [the NFP] section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is equal contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to the equalization of the net family properties... .

Net Family Property

Section 4(1) “net family property” means the value of all the property, except property described in subsection (2), that a spouse owns on the valuation date, after deducting,

- (a) the spouse’s debts and other liabilities, and
- (b) the value of property, other than a matrimonial home, that the spouse owned on the date of the marriage, after deducting the spouse’s debts and other liabilities, other than debts or liabilities related directly to the acquisition or significant improvement of a matrimonial home, calculated as of the date of the marriage;

Section 4(2) The value of the following property that a spouse owns on the valuation date does not form part of the spouse’s net family property:

1. Property, other than a matrimonial home, that was acquired by gift or inheritance from a third person after the date of the marriage.
2. Income from property referred to in paragraph 1, if the donor or testator has expressly stated that it is to be excluded from the spouse’s net family property.
3. Damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages.
4. Proceeds or a right to proceeds of a policy of life insurance, as defined under the Insurance Act, that are payable on the death of the life insured.
5. Property, other than a matrimonial home, into which property referred to in paragraphs 1 to 4 can be traced.
6. Property that the spouses have agreed by a domestic contract is not to be included in the spouse’s net family property. ...

Matrimonial Home

Section 18(1) Every property in which a person has an interest and that is or, if the spouses have separated, was at the time of separation ordinarily occupied by the person and his or her spouse as their family residence is their matrimonial home.

Spousal Support

Section 30 Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so

Section 33(8) An order for the support of a spouse should,

- (a) recognize the spouse’s contribution to the relationship and the economic consequences of the relationship for the spouse;
- (b) share the economic burden of child support equitably;
- (c) make fair provision to assist the spouse to become able to contribute to his or her own support; and
- (d) relieve financial hardship...