

Families and the Law

Property Division

for Married and Unmarried Couples



This booklet explains the law and property division when a relationship ends in Alberta. There is information about:

- dividing property for married and unmarried people
- debts
- common problems and ways to solve them

We've also included some tips and hints that will help you if you are representing yourself in court.

Centre for
Public
cplea
Legal Education
Alberta



Edmonton Community
Legal Centre

Who is this booklet for?

This booklet explains the law and property division when a relationship ends in Alberta. The booklet has information for people who were legally married and people who lived in a common law relationship. There is information about dividing property, debts, and common problems and ways to solve them. We've also included some tips and hints that will help you if you are representing yourself in court.

Family law is complicated. Finding out about the law and your options is a very good first step. There are a lot of people and organizations who can help you. We've listed these referrals at the back of this booklet. Most of the legal words are defined in the margins.

There are other booklets in this series that can help you. Go to www.cplea.ca to find out more.

We would like to thank the Alberta Law Foundation, which was the primary funder for this project. We acknowledge and appreciate the assistance of the family law legal service providers who reviewed the materials and provided suggestions and feedback about the contents. In particular, we appreciate the significant contribution made by the Edmonton Community Legal Centre. Our partnership with ECLC during the resource development phase ensured that the booklets address the priority information needs of families who seek legal help for family issues.

We would also like to thank the Alberta Law Foundation and the Department of Justice Canada for providing operational funding, which makes all of our projects possible.



Edmonton Community
Legal Centre

Alberta **LAW**
FOUNDATION



Centre for
Public
cplea
Legal Education
Alberta

Copyright © Legal Resource Centre of Alberta Ltd., operating as the Centre for Public Legal Education Alberta

ISBN 0-919792-69-3 978-0-919792-69-2

The Centre for Public Legal Education Alberta is a non-profit organization whose mission is to help people understand the law as it affects their everyday lives. We develop plain language booklets, presentations and other learning materials to help people recognize and respond to their legal rights and responsibilities. We have a variety of programs, and provide legal information and referral on many legal topics. For more information, please go to www.cplea.ca.

The contents of this booklet do not constitute legal advice. We make no claims or promises about its accuracy or completeness. If you require legal advice, you should consult a lawyer.

June 2014

Contents

04 How is property divided at the end of a relationship?

05 Property Division for Married People

What is matrimonial property?

What law deals with division of property?

Who can use the *Matrimonial Property Act*?

Are there time limits to divide property?

How does property division work for married people?

Step 1: Make a list of all of the property that you own

Step 2: Value the property

Step 3: Share property and financial information

Step 4: Sort all of the property into different categories according to the MPA

Step 5: Do the math

Step 6: Decide how the property will be divided

If the spouses lived together before marriage, does the property they bought then get divided too?

What about property that is owned outside of Alberta?

Who lives in the house while the property is being divided?

How can property be protected?

15 Property Division for People Who Are Not Married

What laws apply to property division when people aren't married?

What if it wouldn't be fair to let one partner keep all of their assets?

What will a judge think about when dividing property for unmarried couples?

How are joint assets divided?

20 Who lives in the house while the property is being divided?

Who gets to live in the house after separation?

What does it mean to live separate and apart?

What if we can't agree on who should live in the house?

What about the household goods?

What if one partner is not on title to the home?

What if it's a rental property?

22 How is property divided if there is an agreement already?

Can married and unmarried couples enter into an agreement about property division?

What kinds of property can be dealt with under an agreement?

What are the requirements to make an agreement enforceable?

Can the spouses enter into an agreement on their own, after the relationship ends?

What if there is an agreement, but it does not meet the formal requirements?

Can we just have an agreement about the home, and decide the rest of the property later?

If I enter into an agreement, can I change my mind later on?

LOOK FOR THE FOLLOWING SYMBOLS TO FIND:



Additional resources and useful links where you can find more information.



Definitions of some of the common terms used throughout the document.

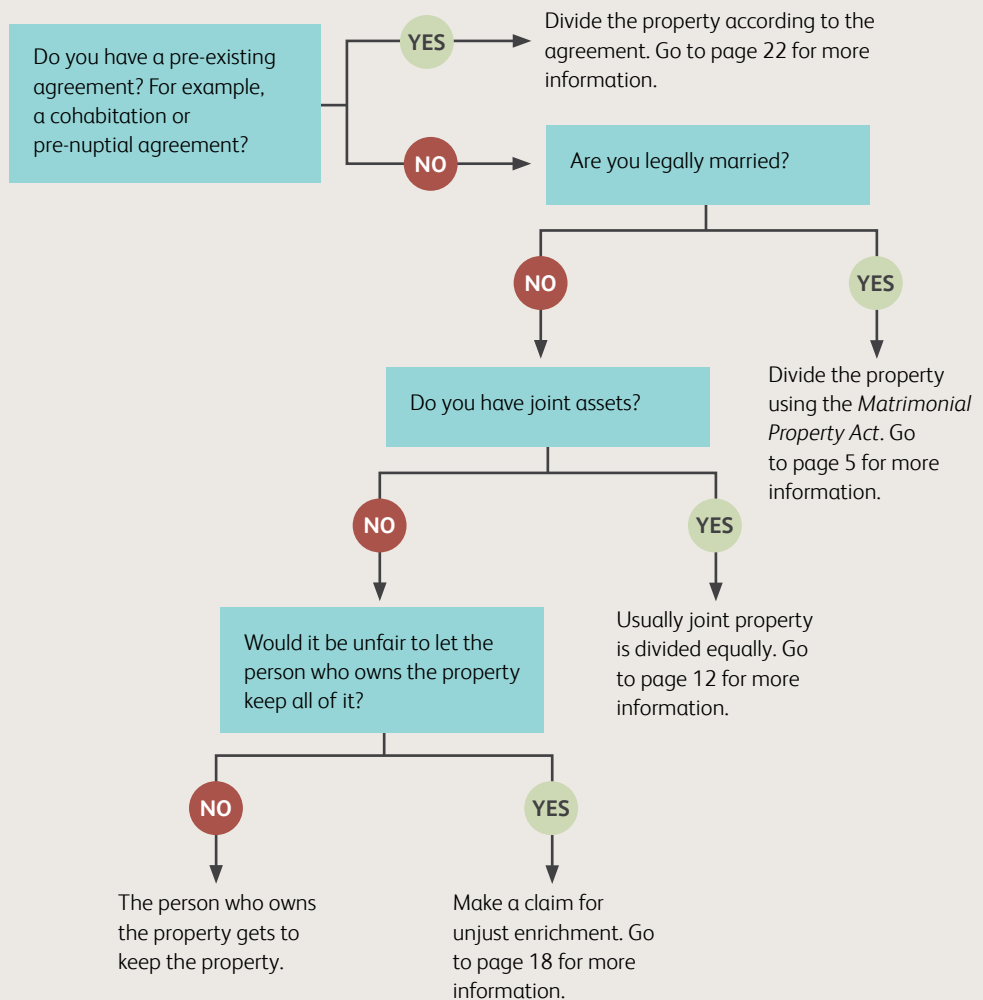


Tips and things to consider that may apply to your situation.

This booklet is based on **Alberta** law.
The law may be different in other provinces.

How is property divided at the end of a relationship?

HOW DOES PROPERTY DIVISION WORK AT THE END OF A RELATIONSHIP?



Property division for married people

What is matrimonial property?

Matrimonial property is all of the property that accumulates during a marriage. This kind of property will usually be divided equally between the spouses. Debt that has accumulated over the marriage is usually shared equally too.

What law deals with division of property?

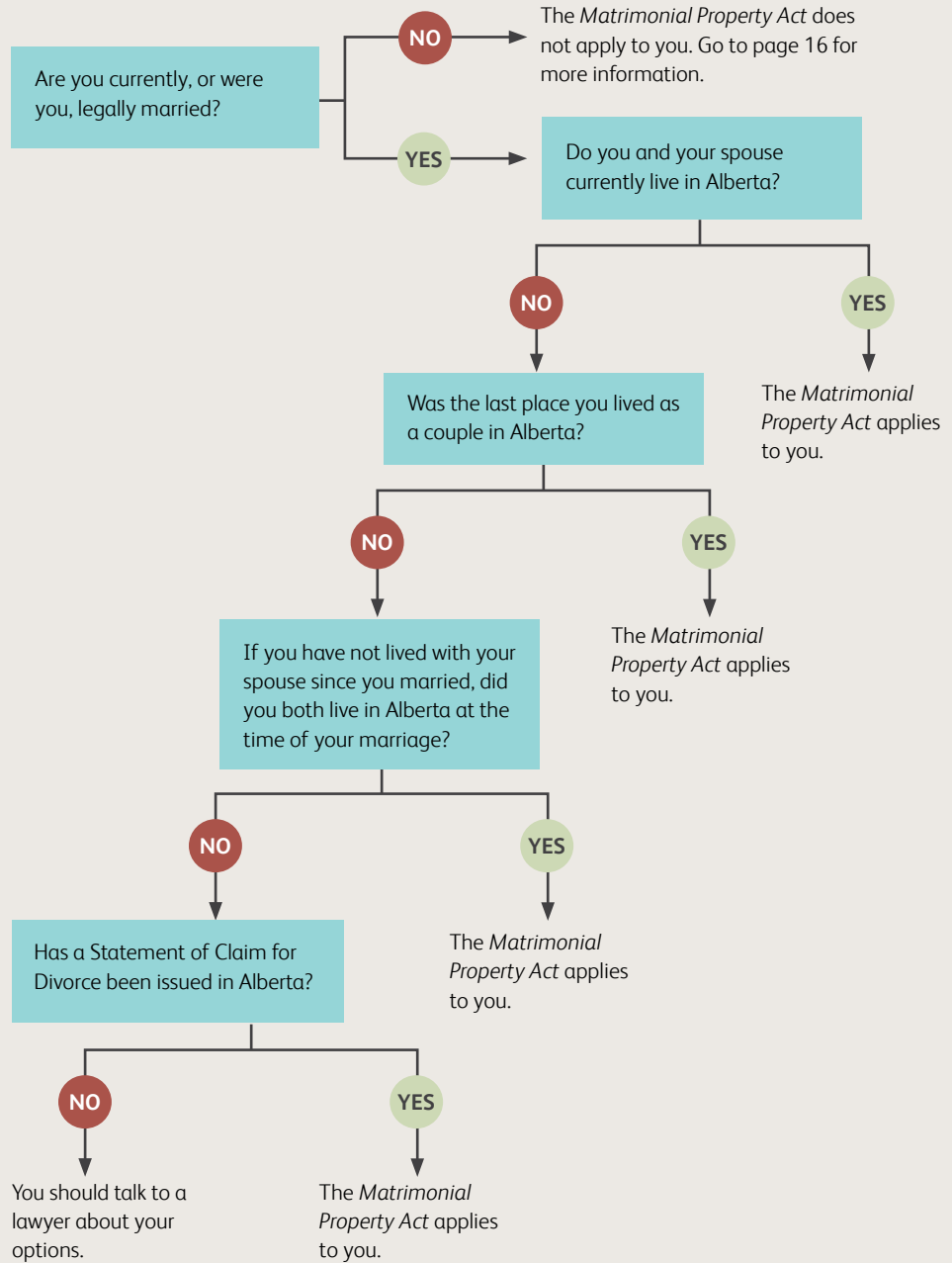
The *Matrimonial Property Act* is the law in Alberta that sets out how property will be divided if the marriage breaks down. The *Matrimonial Property Act* only applies to people who have been legally married. The *Matrimonial Property Act* gives a couple the option of coming up with their own property settlement instead of going to court.



Matrimonial property is all of the property that accumulates during a marriage, including debt.



WHO CAN USE THE MATRIMONIAL PROPERTY ACT?



Are there time limits to divide property?

Yes, there are time limits under the *Matrimonial Property Act*.

WHAT ARE THE TIMELINES UNDER THE MATRIMONIAL PROPERTY ACT?

If you or your spouse are...	You have this long to make a claim
Separated but not divorced	2 years from the separation date OR you must start divorce proceedings
Divorced	2 years from the date of the Divorce Judgment
Giving away or selling property to defeat a <i>Matrimonial Property Act</i> claim	1 year from the date the property was sold or given away
Dead	6 months from the grant of probate, but only if you could have started an action right before your spouse died

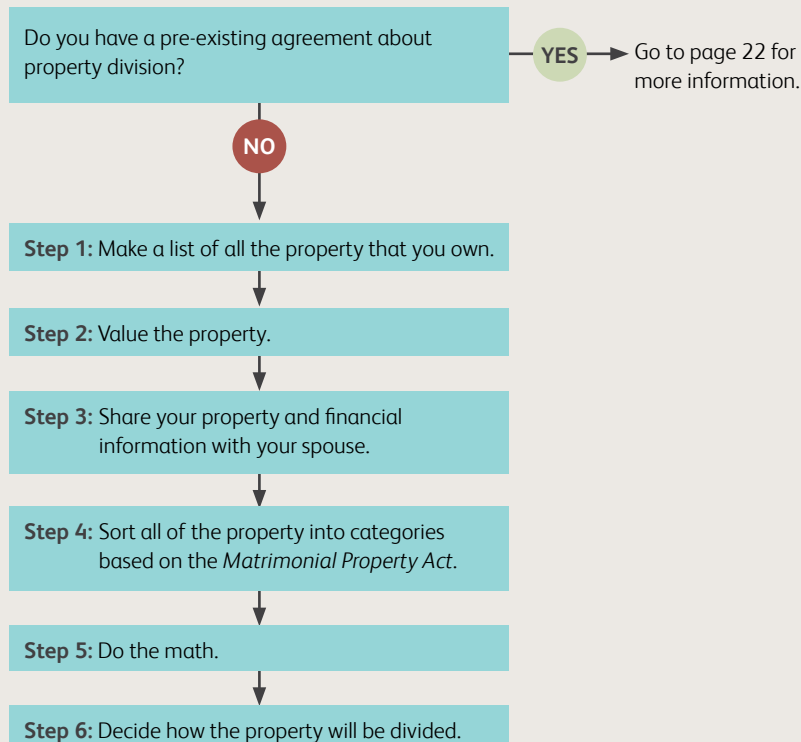


You can read the MPA for free online

<http://canlii.ca/t/81r2>

How does property division work for married people?

HOW IS PROPERTY DIVIDED FOR MARRIED PEOPLE?



Each of these sections will be discussed in more detail.

Step 1: Make a list of all of the property that you own

You should include all of the property that you own in your list. This includes property and assets that you owned prior to the marriage, during the marriage, and after the separation. You should also include any property that is located outside of Alberta. You should also write down when you got the property and how it was paid for.

If you have purchased property after you separated it may or may not be matrimonial property. If a judge was deciding how your property would be divided, the judge would look at all of the property that was owned up to the date of trial. If the property was purchased using other matrimonial property, or was treated as if it was part of the matrimonial property, then property that was acquired after separation may be divided equally. This also applies to debt.

If you are negotiating your own agreement, then you can choose a date with your spouse. Any property or debt acquired after that date can be excluded if you both agree.

Step 2: Value the property

Property values change over time. If you separated from your spouse a year ago, your house would have been worth a certain amount at that time. If you're dividing property now, are you going to use the value of the house at the time of separation? Or the value of the house right now? As already mentioned, the law says a judge will divide property based on the value of the property at the time of trial. But, if you are coming up with an agreement on your own, you can choose a date that works for both you and your spouse. Many people choose to use the value of the property at the time of separation.

There are different methods for figuring out how much an asset is worth, depending on the asset itself.

WHAT ARE SOME COMMON WAYS OF FIGURING OUT HOW MUCH SOMETHING IS WORTH?

Kind of Asset	Ways to Value It
Real estate	Appraisal by a real estate agent or appraiser or tax assessment
Bank accounts	Statement
Investments	Statement
Mortgage	Statement
Credit Cards	Statement
Loans	Statement or loan agreement
Furniture	Look for similar furniture items on Kijiji
Cars	Use Kijiji or AutoTrader to determine the worth

Some property that you have will be taxed when you use it. For example, pensions and RRSPs are taxed once you begin using the asset. It is a good idea to keep these kinds of assets in a separate list.

Step 3: Share property and financial information

Sharing financial information is also called providing financial disclosure. You are required to provide information about all of the property that you own. Even if the property is owned with someone else, or is located outside of Alberta, you must inform your spouse of it. You also have to share information about any property that you've gotten rid of in the past year. The most common way that this kind of information is shared is by using a **Notice to Disclose**.

Even if you are not making a court application, you can still use the notice to disclose form that is used in the Alberta court system. The form sets out all of the information that each spouse is required to provide under the *Matrimonial Property Act*. If your spouse isn't providing you with their information, then you can use the Notice to Disclose as a way to force your spouse to provide you with a sworn list of property. You can find the form at <http://www.albertacourts.ab.ca/CourtofQueensBench/PublicationsForms/FamilyLawForms/tabid/447/Default.aspx>.

The Alberta Rules of Court, which contains the rules that must be followed if you are involved in the court process, set out more ways that you can use to get financial disclosure. For example, the Rules allow you to ask your spouse questions under oath, either through written questioning or in person. You can read the rules by going to <http://www.qp.alberta.ca/1125.cfm>



Notice to Disclose is a court document that sets out all of the financial information that both spouses must provide to one another. The spouses have a set amount of time to provide the information.



For more information about the Alberta Rules of Court, go to the Queen's Printer website

<http://www.qp.alberta.ca/1125.cfm>

Step 4: Sort all of the property into different categories according to the MPA

Property that will not be divided

Certain kinds of property will usually be excluded from division and given to one spouse only. Exempt property includes:

- **Property that a spouse owned before getting married**

Kim owned \$40,000 in RRSPs when she came into the relationship. She still has those RRSPs, so their value won't be divided.

- **Property that is a gift from a third party**

Mariam's mom gave her some antiques that had been passed down from her mother. Mariam will be able to keep the antiques because it was a gift that was intended only for Mariam, and not for the family.

- **Property that has been inherited**

Ricardo received a \$10,000 inheritance when his grandmother died. Ricardo put the money into a savings account in his own name. Ricardo will be able to keep the value of the inheritance at the time it was received (\$10,000).

- **Any award or settlement of tort damages or proceeds from non-property insurance policies**

Amina was in an accident. She received a \$20,000 settlement through insurance for pain and suffering. She put the money into RRSPs. She will be able to keep the \$20,000.

For an exemption to occur, you must still have the exempt asset, or you must be able to trace the value of the exempt asset into a current asset.

For example, if Kim owned \$40,000 in RRSPs before the marriage, and she still owns those RRSPs, then the value won't be divided.

If the asset can't be traced, then the exemption is lost.

For example, Ryan received a \$10,000 inheritance. He and his wife went on a vacation and used the leftover money to pay bills. Ryan can't trace the money into an existing asset, so he loses his exemption.

Property that may be divided unequally between the spouses

Some property will not be divided equally between the spouses. Instead, the division will be based on what is fair in the circumstances.

- **Any increases in value of exempt property**

Peter inherited a cottage from his parents a few years ago. At the time Peter inherited it, it was worth \$100,000. Now it is worth \$120,000. The \$20,000 could be shared between the spouses, in whatever way is just and equitable. For example, if the property increase is due to the work that Peter put into the property on his own, then perhaps Peter should receive a bigger share of the value than his spouse.

- **Property that is purchased using income received from exempt property**

Louise inherited a house from her parents. She rents the house out and puts the rental income into investments. Louise may have to share the money that she makes from her investments with her spouse, but she could argue that she should receive more than her spouse because she did all of the work for the rental property and the investments.

- **Property that was acquired after separation**

Sayed bought a new home to live in after he separated from his spouse. He purchased the home using money from his parents as a deposit and his spouse has never lived in the property. He could argue that he should not have to share the value of the property with his spouse, or that his spouse should receive very little of the value, because it was not purchased using matrimonial property or treated as part of the marital property.

- **Property that was a gift from one spouse to the other**

Reece purchased jewelry for her husband throughout their marriage. He could argue that he should receive a bigger share of the value of the jewelry because it was his gift and for his use alone.

The judge will decide what is fair based on many factors set out in the MPA.

- The roles and contributions of each spouse during the marriage
- The income, earning capacity, liabilities, and obligations of each spouse
- The length of the marriage
- Any agreements between spouses
- Prior court orders
- The **dissipation** of property by a spouse

For a complete list of factors that a judge will think about, go to section 8 of the MPA.



Dissipation is the unjustified wasting of matrimonial assets.

For example, selling assets to pay for gambling, drinking, holidays, and foolhardy investments. The cases are usually extreme.



You can read the MPA for free online

<http://canlii.ca/t/81r2>

Property that will be divided equally

All other property that is left is property that will be shared equally between the spouses, unless it would be unfair to do so. The judge will decide what is fair based on the same factors that were listed previously. In the majority of cases, it is fair to divide property equally between the spouses.

COMMON EXAMPLES OF MPA PROPERTY

How the property is usually shared	Examples
Property that is usually shared equally	<ul style="list-style-type: none">· The matrimonial home· Vehicles· Pensions· Investments
Property that is usually shared, but not equally. The property is divided based on what is fair	<ul style="list-style-type: none">· Increases in value of exempt property· Income received from exempt property· Property acquired after the separation· Gifts from one spouse to the other
Property that is exempt from sharing	<ul style="list-style-type: none">· Inheritances· Property that one spouse owned before the marriage· Gifts from third parties· Any award or settlement of tort damages or proceeds from non-property insurance policies

Step 5: Do the math

The goal of the MPA is to divide property and assets fairly between both spouses. Here is an example of division of property under the MPA.

Joe and Beth are getting a divorce after being married for 15 years. Beth owned a condo before the marriage and it was worth \$150,000 when they married. They rented Beth's condo out, and bought a house together worth \$300,000. Joe had \$40,000 in savings when they got married. Now that they are divorcing, they've gotten appraisals done on both properties. Beth's condo is worth \$200,000 now, and their home is worth \$400,000. How might they divide their property?

The value of the house will be divided equally. Beth will get \$200,000 and Joe will get \$200,000.

Property that each of them owned before the marriage will not be divided. Beth will get to keep \$150,000 for the condo, and Joe will get to keep \$40,000 for his savings (he still has the \$40,000 in an account).

Some property will be divided on the basis of what is fair. Beth's condo is worth \$50,000 more than it was before the marriage. This increase will be divided, but the division will be based on what is fair. Joe and Beth agree that while Beth did a lot of the rental property management, Joe helped out with by handling some of the property maintenance. They agree that dividing the property 60/40 is fair. Beth will receive 60% of the increased value (\$30,000), and Joe will receive 40% (\$20,000). If Beth had done all of the work to find tenants, act as the landlord, and do the maintenance on the property, then Beth might keep a higher proportion of the value.

EXAMPLE OF MPA PROPERTY DIVISION

	Beth	Joe
House	\$200,000	\$200,000
Beth's condo	\$150,000	
Joe's savings		\$40,000
Increased value of Beth's condo	\$30,000	\$20,000
What they each secure	\$380,000	\$260,000

Step 6: Decide how the property will be divided

Sometimes a spouse will be able to afford to buy the other spouse out of the property. Usually, however, the property will have to be sold because spouses don't have the cash to buy each other out. If the assets are sold, then the proceeds from the sale will be divided. A judge can order that a property be sold or transferred from one spouse to another. For pre-tax assets, there is the option of using a tax-free rollover to avoid tax implications.

If the spouses lived together before marriage, does the property they bought then get divided too?

The property that they accumulated before the marriage would not be divided using the *Matrimonial Property Act*. If the spouses wanted that property to be divided, then they would have to divide that property as if they were unmarried.

Sometimes it is not worthwhile to apply to divide any property from prior to the marriage. It depends on the assets. For example, if the couple bought a house together prior to their marriage and they owned it jointly, then the property would be divided equally anyway.

What about property that is owned outside of Alberta?

The MPA allows a judge to think about property outside of the province. While the judge cannot make an order that relates to that property, the judge can take that property into consideration. Often, this means that the judge will divide the property in the province in such a way to reflect the property outside of the province. If spouses are making their own agreement, they should make sure to include the values of out-of-province assets.

Property division is very complicated.

Consider talking to a lawyer for advice before making any agreements about division.

Who lives in the house while the property is being divided?

If the spouses cannot come to an agreement about who will live in the property, then a judge can make an order giving one spouse the right to live in the **matrimonial home** and use the household goods.

When making this kind of order, the judge will think about:

- the availability of other places to live within the financial means of both the spouses;
- the needs of the children who live in the matrimonial home;
- the financial positions of the spouses; and
- any court order that relates to financial support or property division.

How can property be protected?

There are ways that a spouse can protect the property and ensure that the property is still available to be divided.

Things that you can do to protect yourself and your property:

- cancel secondary credit cards;
- change your pin number on all of your cards if your spouse was aware of your number;
- open a bank account in your name only if you don't have one already;
- talk to the bank about your joint accounts;
- register a Certificate of Lis Pendens at the Land Titles Office against all real property (this certificate gives notice to any potential purchasers or lenders that there is a potential dispute over the land and usually results in restrictions of a sale);
- if possible, change any overdrafts and lines of credit to require two signatures; and
- update the beneficiary of your will, insurance, RRSPs, and investments.

If one spouse is selling or transferring property to get around the requirements of the MPA, the other spouse can bring an application to divide the property within one year of the date the property was transferred or sold.



Matrimonial home is a property that is owned or leased by at least one of the spouses, that the spouses have lived in as their family home, and it must be a house, self-contained dwelling unit, part of a business that is used as living space, a mobile home, a condo unit or a suite.

Property division for people who are not married

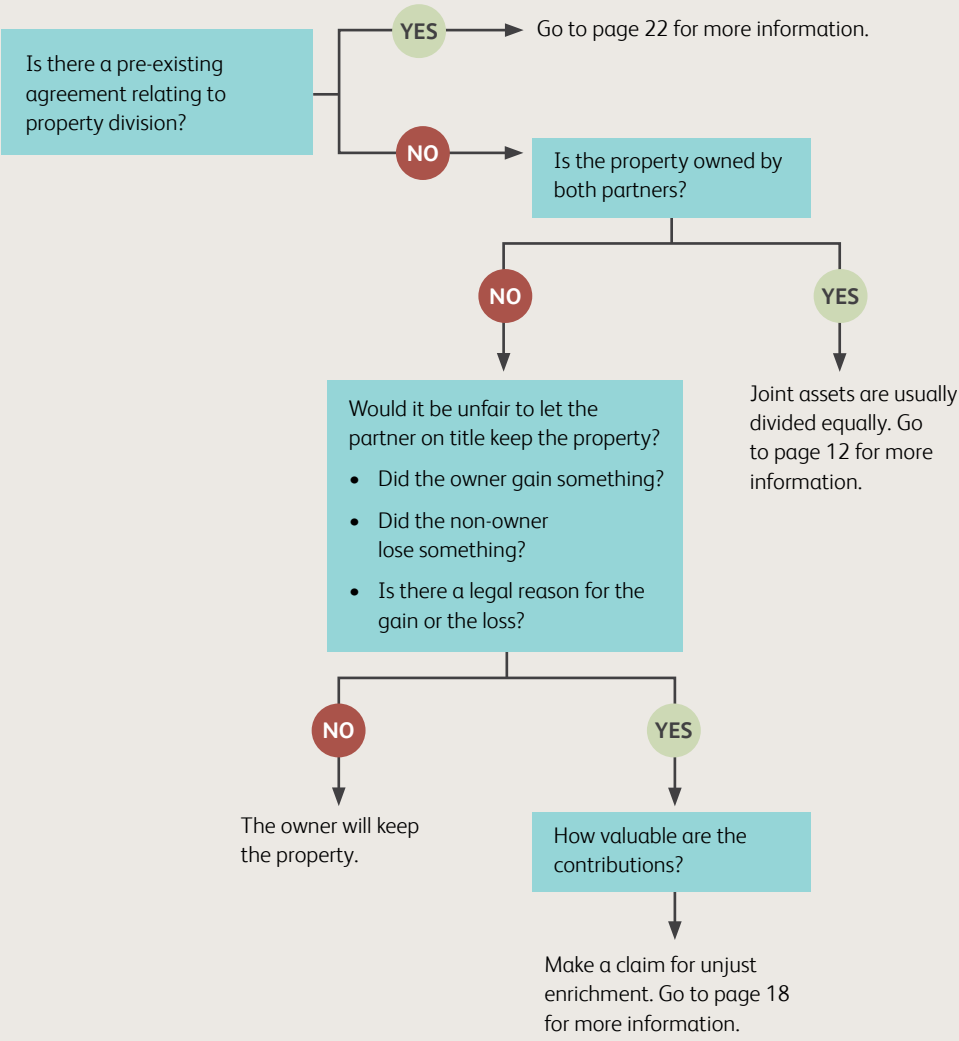
What laws apply to property division when people aren't married?

There is no specific law in Alberta that deals with property division for unmarried couples. The *Matrimonial Property Act* sets out the rules for property division for people who are married, but this law does not apply to people who are not married.

There is no presumption that property will be shared equally between the unmarried partners at the end of the relationship. In general, the property that is purchased during the relationship belongs to the person who paid for it and who is registered as its owner.



HOW IS PROPERTY DIVIDED FOR UNMARRIED PEOPLE?





Unjust enrichment is when someone is enriched at the expense of someone else.

What if it wouldn't be fair to let one partner keep all of their assets?

Sometimes it would not be fair to let one person keep all of the property that is in their name. If the other person has contributed in a non-financial way to the property, then it might not be fair for one partner to keep that asset to themselves. The partner who made the contributions can ask a judge to divide the value of the property based on what is fair. This kind of claim is called a claim for **unjust enrichment**.

WHAT ARE SITUATIONS WHEN IT MIGHT NOT BE FAIR TO LET AN UNMARRIED PARTNER KEEP THEIR PROPERTY?

When one partner contributes to the property, but does not get paid for those contributions.

EXAMPLE

For example, Bill is the sole owner of the house that he lives in with Ann. They have lived together for five years. Ann helped with the yard maintenance, renovated the inside of the home, and did the majority of the housekeeping. It might not be fair to let Bill keep the entire value of the house given the unpaid work that Ann contributed to the property.

EXAMPLE

Maria and Jim have lived together for ten years. Maria owns her own catering business. Jim helps her when she is short staffed, and he does all of the bookkeeping. He was never paid for any of those contributions. It might be not be fair for Maria to keep all of the business proceeds.

This area of law can be complicated and it is a good idea to talk to a lawyer before you make a claim.

What will a judge think about when dividing property for unmarried couples?

In a claim for unjust enrichment, the non-owner partner is asking the judge to divide their partner's property because it would be unfair to let the owner keep all of the property. The non-owner partner has to prove that the owner gained something, that the non-owner suffered a loss, and that there is no legal reason for the gain or the loss. If one partner has been unjustly enriched, then the judge will try to place a value on the non-financial contributions.

EXAMPLE

Sam moved into Paul's house, and only Paul is on title to the home. Paul works at a job outside the home, while Sam takes care of the household and the children. Sam does all of the chores, oversees the home maintenance, and has been involved with renovations to the home. Sam wasn't paid for these contributions, but the contributions mean that Paul is able to dedicate time to his career. After 10 years, they end their relationship. Sam doesn't think that it is fair that Paul should keep all of the value of the house simply because his name is on title.

Did the owner gain something?

Yes, Paul benefitted because he hasn't had to hire a cook, housekeeper or nanny, and he was able to concentrate on his career while Sam took care of the home and the children.

Did the non-owner partner suffer a loss?

Yes, Sam has suffered a loss because there was no financial compensation for all of the work that he did in the home. Sam could have worked outside of the home as a cook, housekeeper or nanny and been paid.

Is there a legal reason for the gain or loss?

There is no legal reason for the benefit or loss. Sam was contributing to their family in a non-financial way because his actions benefitted the entire family.

How valuable are the unpaid contributions?

Sam could research to find out how much the services that were being provided are worth outside of the home. The judge would award a monetary amount that is reasonable given the work that was done and the circumstances.

How are joint assets divided?

When a couple purchases property together, then the property is owned jointly between the partners. The property that is owned jointly will usually be divided and the value shared between the partners.

If the joint property is real estate, then the *Law of Property Act* allows either partner to apply for an order to help with the division. A partner can apply to:

- physically divide the lands;
- sell the property;
- divide the sale proceeds between the partners; or
- sell the interest of one partner to the other.

Who lives in the house while the property is being divided?

Who gets to live in the house after separation?

Living arrangements can be negotiated. You and your partner could decide that one of you will stay living in the property, while the other finds somewhere else to live. You could choose to live separate and apart, while still living in the same house. You could choose to both move. If you have children, then the decisions that you make should be made based on what is in the children's best interests.

If you can't reach an agreement with your partner, then you can make an application for exclusive possession of the home.

What does it mean to live separate and apart?

You must live separate and apart from your spouse for one year in order to be granted a divorce in Alberta. You can live in the same house, and still be considered to be living separate and apart. If you are unmarried, then there is no requirement to live separate and apart.

Some factors that indicate the spouses are living separate and apart are:

- you hardly communicate with your spouse;
- you have separate bedrooms;
- you do not have sex together anymore;
- you don't help each other with household tasks; and
- you don't share in each other's activities.

What if we can't agree who should live in the house?

If you can't reach an agreement with your partner, then you can make an application for exclusive possession of the home. If the order is granted, then one partner would have the right to live in the home for a period of time. The other partner would have to vacate the home. If you are unmarried, then you would make an application using the *Family Law Act*. If you are married, then you could use the *Family Law Act* or the *Matrimonial Property Act*.

When making this kind of order, the judge will think about:

- the availability and affordability of other places to live that are within the financial means of both partners;
- the needs of the children;
- the financial positions of the partners; and
- any court order that relates to financial support or property division.

What about the household goods?

You can apply for an order that requires that household goods to stay at the home. The judge will decide what goods should be included in the order based on what is needed to be able to use and enjoy the family home for transportation, household, educational, recreational, social or esthetic purposes. For example, you could request that you have exclusive use of the car to use for transportation.

What if one partner is not on title to the home?

If you do not own the property, you can still apply for exclusive possession of the home.

What if it's a rental property?

If you rent your family home from a landlord, then you can still apply for an exclusive possession order. Even if you are not listed on the tenancy agreement as a tenant, you can still make an application.

How is property divided if there is an agreement already?

Can married and unmarried couples enter into an agreement about property division?

Yes, married and unmarried couples can enter into agreements about how the property will be divided if the relationship ends. These agreements can be made at any time during the relationship. If the people are married, then the agreements must meet the requirements under the MPA. It is a good idea for unmarried people to follow the same rules, just to be sure that their agreement is enforceable. An agreement is simply a contract, so any couple can enter into one.

What kinds of property can be dealt with under an agreement?

All property can be divided under an agreement. The property can be jointly owned or owned by one spouse alone.

What are the requirements to make an agreement enforceable?

Each spouse must meet with separate lawyers. The spouses have to acknowledge that:

- they are aware of the nature and the effect of the agreement;
- they are willing to give up possible future claims to the other spouse's property; and
- they are executing the agreement freely and voluntarily and not being pressured into signing.

Can the spouses enter into an agreement on their own, after the relationship ends?

Yes, the spouses can make their own agreement regarding their property after they separate. To make the agreement enforceable, it will have to meet the formal requirements above. Many people enter into their own property agreements.

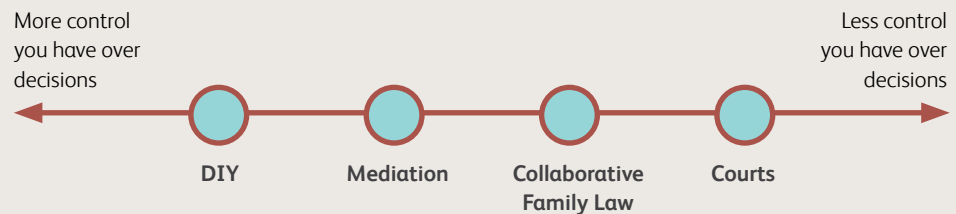
EXAMPLE OF DIFFERENT AGREEMENTS

When the agreement is made...	Example
Before moving in together (married or unmarried)	Junaid and Salma are moving in together. Salma owns a house already, and they are going to live together there. Salma does not want to take any chances with the house, so she asks Junaid to sign an agreement saying that the house is hers and that he will not make a claim for property division if their relationship ends.
While living together (married or unmarried)	Catherine and Jim have lived together for six years. Jim has had some gambling problems and has racked up some debt. When Catherine finds out, she asks Jim to sign an agreement saying that she's not responsible for any of the debt that he's incurred.
When the relationship ends (married or unmarried)	Nevin and Jake just ended their twelve year marriage. They agree that the kids will spend equal time with both parents, that spousal support will be paid while Nevin goes back to school to upgrade her employment skills, and that the equity they have built in the home will be divided between them. This kind of agreement is usually called a separation agreement.

You and your spouse
will have to meet with
separate lawyers.

How can we make a property agreement?

TYPES OF PROPERTY AGREEMENTS



DIY

You and the other person can make an agreement yourselves about how you are going to divide property. You will have to each go to a lawyer independently to make sure you understand the rights that you are giving up through the agreement. Making an agreement on your own can save money and time, and you will also have control over what the agreement says.

Mediation

A mediator can help you work with the other person to come up with a property division plan that will work for both of you. The mediator is a neutral person, and won't take sides. The mediator will not force an agreement on you, but will help you come up with an agreement yourselves.

Collaborative Law

You and the other person will both have your own lawyers, but you agree that you will work together, share financial information, and that you won't go to court. Most of the communication occurs in four way meetings, with the lawyers, and the other spouse present.

Courts

If you cannot agree on a property division agreement, then you can apply to the courts. A judge will decide how your property will be divided. Court should be a last resort.

What if there is an agreement, but it does not meet the formal requirements?

Sometimes judges will enforce those agreements anyway. There are cases under the MPA where judges give effect to non-compliant agreements and make changes to them as needed.

Can we just have an agreement about the home, and decide the rest of the property later?

Yes, you can have an agreement about only one asset or property. Sometimes it is more cost effective to have an all encompassing agreement, as you will have to go to a lawyer for each new agreement that is made.

If I enter into an agreement, can I change my mind later on?

In most circumstances, you cannot set aside an agreement because you change your mind. You would need more, such as proof that you were forced to sign the agreement, or that you received incomplete financial disclosure. If you want to try to set aside an agreement, you should get legal advice before taking any steps.



Limited scope retainer is an arrangement where a lawyer provides legal services for part of your legal matter, but not all of it.



If you think that you want to represent yourself with some help from a lawyer, then you might want to find a lawyer who offers a limited scope retainer. In this arrangement, a lawyer provides legal services for part of your legal matter, but not all of it. The part that the lawyer will be responsible for is something that you make an agreement over before starting to work together. For example, you could hire a lawyer to draft all of the court documents, but you would represent yourself in the actual application. Or you could hire a lawyer to act like a coach, who would provide you with legal advice when you needed it, but you would do all of the other work. You will have to call law firms or look online to find out if a lawyer offers this kind of service.

Contacts

Legal Aid Alberta - Service Centres

Offers information, referral and representation services to those who meet financial guidelines across Alberta.

1 866 845 3425

ADR Institute of Alberta

Has a roster list of private mediators.

www.adralberta.com

1 800 232 7214

Collaborative Divorce in Alberta

Has a list of lawyers who practice collaborative law in Alberta.

www.collaborativepractice.ca

Law Society of Alberta Lawyer Referral Service

Can provide the contact information for three lawyers you can contact. You should receive a half hour free consultation.

1 800 661 1095

Family Justice Services

Offers a variety of low cost and free programs to help individuals find solutions to family law issues.

www.albertacourts.ab.ca/fjs/index.php

Family Law Information Centre

Can help you with court procedure, forms and child support calculations, as well as provide you with information and referral.

www.albertacourts.ab.ca/fjs/flic.php

Legal Clinics

Clinics can provide you with legal information and advice.

Calgary Legal Guidance

403 234 9266

clg@clg.ab.ca

Central Alberta Community Legal Clinic

1 877 314 9129

info@communitylegalclinic.net

Children's Legal & Educational Resource Centre (CLERC)

403 207 9029

clerc@clerc-calgary.ca

Edmonton Community Legal Centre

780 702 1725

intake@eclc.ca

Lethbridge Legal Guidance

403 380 6338

Grande Prairie Legal Guidance

780 882 0036

gplg@thecommunityvillage.ca

Student Legal Assistance (Calgary)

403 220 6637

Student Legal Services (Edmonton)

780 492 8244

The **Families and the Law** series has several booklets to help you understand Family Law in Alberta:

- Child Custody and Parenting
- Financial Support
- Property Division for Married and Unmarried Couples
- Representing Yourself in Family Court
- Young Parents

To find these booklets and more, go to www.cplea.ca

Families and the Law

Property Division

for Married and Unmarried Couples

**Centre for Public Legal
Education Alberta**
800, 10050 112 Street
Edmonton, Alberta T5K 2J1

Tel 780 451 8764
Fax 780 451 2341
info@cplea.ca
www.cplea.ca

Centre for
Public
cplea
Legal Education
Alberta