

YOU AND THE LAW[®]

WHEN IS IT UNFAIR TO SPLIT FAMILY ASSETS EQUALLY?

After your marriage ends, do you and your spouse each get half of what you own? Not necessarily.

The *Family Law Act* empowers the court to order an unequal division of family assets (and debts) if splitting them 50-50 would be "significantly unfair." A recent case illustrates this.

Jack and Jenny (names changed) married and had four children. They separated in 2009. In early 2013, Jenny got an order for sole custody of the kids, and Jack was ordered to pay child support of \$754 a month. Jenny applied later in 2013 to divide the money from the sale of their house. (Jenny was also granted a divorce.)

The court looks at several things to decide if an equal split of family property would be significantly unfair, including:

- the length of your relationship
- any agreements you've made with each other
- contributions made by you to the other's career

As well, the court can look at "any other factor ... that may lead to significant unfairness." That's what the court did here.

Early in 2010, Jack and Jenny agreed that Jack would keep about \$100,000 worth of business equipment and vehicles, and Jenny would get the house instead of child support. Jenny afterwards paid the mortgage on the house with help from her family, but despite the "agreement" (and a later one where Jack "gifted" the house to her if she paid off their family loans to buy the house), the house was never transferred to her.

So in August, 2013, Jenny got a court order to sell the house. The sale resulted in net proceeds of about \$70,000.

Explaining why splitting the house sale proceeds in half would be significantly unfair here, the court said: "... there are elements to this case that clearly militate against dividing up the proceeds of sale equally between the parties. ... [Jack] intended [Jenny] to have the equity from the matrimonial home in lieu of child support. While that might have made sense to the parties at the time, it reflects a view that all of the [other] matrimonial property, including the equipment and vehicles worth approximately \$100,000, belonged to [Jack] to dispose of as he saw fit without regard to [Jenny's] interests... If the proceeds from the sale of the matrimonial home were divided equally ..., [Jack] would be receiving a double benefit – giving [Jenny] the home in lieu of child support and then effectively clawing half of it back, while still retaining ... the equipment and vehicles."

The court decided Jenny should get all the house sale money. This would take care of Jack's outstanding child support obligations from the time of their separation (over \$35,000). He could keep the roughly \$100,000 worth of business equipment and vehicles that he got in 2010.

In addition to an unequal split in some cases, certain assets – like those acquired by one spouse before the relationship, inheritances and gifts – may be excluded altogether from the division of family property.

If you and your spouse have separated, a family lawyer can help you.

Sponsored by family lawyer, Susan Guy Andrew, this column provides information only and must not be relied on for legal advice. Please contact Susan for legal advice concerning your particular case.



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