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L A W Y E R S

Present:



YOU AND THE LAW

WHO GETS WHAT WHEN YOU SPLIT UP?

Say you own a house which you move into with your future spouse. You marry and a few years later you sell the house and buy a new house with the money, which you put into both names. If you later break up, does your spouse get a share of the value of the property you brought into the relationship?

New B.C. family law rules for splitting up assets and debts came into effect on March 18, 2013, which apply in lawsuits about this started after that date. They cover married and unmarried spouses (such as couples who've lived together as if married for two years), including same-sex spouses. Even if you try and sort things out by agreement, the new rules are a useful yard stick for figuring out a fair split.

The basic outline is this: all family debts and assets you own together or separately at the time of separation – except “excluded property” (such as gifts, inheritances or assets either of you owned before the relationship) – are to be divided equally. The court can order a different split, but only if an equal division would be significantly unfair.

So far, so good. But the devil is in the details. A recent court case dealt with some of the tricky questions left open by the new rules. Peter (all names changed) started to live with Sandra in the fall of 1990. They got married in 1991, had two children and separated in 2012. When they started their relationship, Peter owned a property which he and Sandra moved into together and lived in for some years. It was worth \$65,000 at the start of their relationship.

That property was later sold, and the money was used to buy a new home and some other land that was put in Peter and Sandra's names jointly.

In court, Peter argued that the \$65,000 value of the property he brought into the relationship should be “excluded property,” not family property to be divvied up. Sandra said “no” – since the sale money was used afterwards to buy real estate in their joint names, he'd given her one-half of it, she argued, based on some case law that's still in effect.

The new rules don't specifically deal with the earlier case law. But the B.C. Supreme Court decided the new family law rules are meant to be complete and comprehensive. It pointed out some problems if the earlier case law were allowed to come into play. For example, married and unmarried spouses would be treated differently when assets are split (since the earlier case law only benefitted married spouses).

So the court decided that all of the \$65,000 value of the property that Peter had brought into the relationship was “excluded property.” And, after dealing with other issues in the case, the court also decided that an equal split of the family property (worth some \$1.8 million dollars now) was appropriate and would not be significantly unfair.

The new family law rules dealing with the division of family assets and debts are complex, and quite different than what they used to be.

Consult your lawyer if you're breaking up with your partner.

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#300 - 410 Carleton Avenue at Hastings

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