

DIVISION OF PROPERTY

Family property is divided between spouses when their marital or common-law relationship ends. Parties are in a common-law relationship after living together as spouses for two years. Real estate, bank accounts, vehicles, pensions, RRSPs, and all other personal property is “family property” – the property which is in existence at the date a Petition is filed. Family property is valued at the date the Petition is filed or a future date, such as a trial or agreed resolution, if there has been an increase in value as a result of market forces. It is not valued when the spouses separate.

The value of some property may be excluded from division or is “exempt”. There are various complex exemptions that apply in certain situations; however, the main exemption is that the value of any property at the date the spousal relationship began, and which still exists at the date the Petition is issued, is exempt from distribution. The family home and household goods are divisible even if one spouse owned them when the spousal relationship began.

Written agreements can be entered into before, during, or after the spousal relationship so that property is divided in accordance with the parties’ wishes rather than in accordance with the legislation. In order for an agreement to be enforceable, both parties must receive independent legal advice from different lawyers at different firms. In addition, there are other requirements that must be complied with in accordance with the legislation to make the agreement enforceable.

It is very important to contact a lawyer soon after you separate as there can be significant consequences regarding division of family property associated with delay.

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SASKATOON
374 Third Ave South
Saskatoon, SK S7K 1M5
(306) 653-2000 F (306) 653-2669

REGINA
800 - 1801 Hamilton Street
Regina, SK S4P 4B4
(306) 565-6500 F (306) 565-6565

mckercher.ca