Who Gets What? Divorce and the Division of Marital Property

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When couples separate and divorce, one of the issues that must be settled is the distribution of joint property.   In Alberta *The Matrimonial Property Act* creates a regime which governs the division of property between parties on divorce.   It directs that property accumulated during the course of the marriage is to be divided equally between the parties except in rare and exceptional circumstances.   The Act directs the division of the value of property as opposed to the property itself. In general, the value of property is determined at the date of trial or settlement, not at the date of separation and is based on fair market value.   Liabilities incurred during the marriage are generally also shareable equally. Liabilities incurred post-separation may not be.

Under the *Act*, matrimonial property includes, among other things, the following:

1. The family home and any other real and personal property;
2. Vehicles and equipment;
3. Bank accounts;
4. Jewelry;
5. Art;
6. RRSP's: Pursuant to the Separation Agreement these can be rolled over from one spouse to another without tax implications at the time of separation or settlement, to equalize registered investments between the parties. In the event they are to be set off against other assets, there has to be a tax discount to reflect the fact that these assets are not tax free. Typically, the discount is 20 to 25 percent.
7. Whole life insurance policies: The value of these is the cash surrender value of the insurance policy. Term life insurance policies have no value.
8. Private pension plans: There are different types of plans including defined contribution and defined benefit pension plans. A defined contribution plan is very similar to an RRSP. The value the employee receives from a defined contribution plan is defined by the amount of

money in the employee's pension account at the time of retirement. A defined benefit plan is a plan generally more often available from employers such as government or international corporate entities. In such a pension plan the benefit the employee is to receive on retirement is defined as a percentage of their best or last number of years' employment income, without reference to the contributions made by the employee to the plan. A pension is generally divided on a formula calculated as 50 percent of the value of the pension multiplied by the number of years the parties were married and the employee contributed to the plan over the total number of years the employee contributed to the plan, as only the portion of the pension earned during the marriage is considered to be divisible.

9. Canada Pension Plan: Similar to a private pension plan, only the portion of pension credits accumulated during the marriage is considered divisible.

Higher valued items such as art or jewelry may need to be appraised by a qualified valuator if the parties cannot agree on values. Other options include valuations from a dealership (for vehicles, machinery and recreational vehicles) or a survey of sale prices from websites such as Ebay, Craig's List or Kijiji. These items can also be divided up between parties for convenience of use, if one can reach a relative understanding of the value of them.

Market value for used furniture is garage sale value or auction value. Due to the fact that there is such depreciation from the retail price, the value of house contents and furnishings is usually not worth incurring legal fees over. We generally encourage parties to try to reach a reasonable arrangement themselves as to the distribution of such items. Dividing up house contents so that each party will have an equivalent burden of replacement is usually the recommended result and an alternating pick by each of the parties is the recommended process.

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