

Marital Property

in New Brunswick



**Public Legal Education
and Information Service
of New Brunswick**

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This pamphlet is for general information only. It does not contain a complete overview of the law. There may be other rights and interests given by the **Marital Property Act** that are not discussed. How the law will affect individuals depends on the facts of each case and on changes in the law from time to time. Anyone needing specific legal advice should consult a lawyer.

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What is marital property?

Under the **Marital Property Act**, marital property consists of family assets that a married couple acquired either before or during the marriage. Family assets include property owned by one or both spouses and are ordinarily used by them and their children while they are living together for shelter or transportation, or for household, educational, recreational or social purposes.

The most common types of marital property are the marital home or homes, household goods, money, personal investments, automobiles and recreational vehicles. Certain assets, such as those used for business purposes are not included in the marital property.

What is a marital home?

The marital home can be any number of places that are or have been occupied by you and your spouse as your family home. The marital home may include, for example, an apartment, a house, a cottage or a mobile home.



What are household goods?

Household goods are furniture, equipment, appliances, and other items of this nature used by your family in or around your marital home. Household goods may include, for example, a stove, a kitchen table or a lawn mower.

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Who is covered by the *Marital Property Act*?

The *Marital Property Act* provides for the legal rights and interests of

- (a) a person planning to get married, a married person, a person whose marriage has broken down, a person obtaining an annulment or divorce or a person whose husband or wife has died (even if the marriage took place before the Act came into force), and
- (b) persons, whether married or not, who are considering signing or who have signed a marriage contract, separation agreement or cohabitation agreement.

What rights does the Act give married persons?

In New Brunswick the law recognizes that contributions of both spouses to a marriage are of **equal** importance and each spouse is entitled to an **equal** share of the marital property except in certain special circumstances.

What property do spouses not have to share?

Spouses do not have to share property that is not considered marital property. For example, they are not required under the Act to share certain business property, inheritances, gifts and property obtained after separation, as well as certain proceeds of the sale of such property. Only in special circumstances would you have to share this property.

When can I get a share of marital property?

You can ask the Court to divide marital property in the following cases:

- (a) when you get a divorce;
- (b) when your marriage is annulled;
- (c) when you separate from your spouse;
- (d) when your marriage breaks down, whether you separate from your spouse or not; or
- (e) when your spouse has died.

How can I get a share of marital property?

You and your spouse can agree to the division of your marital property. If you cannot agree, you may wish to use the services of a mediator to help you resolve differences. Any agreement that you make can be included in a separation agreement. Both spouses should have the agreement reviewed by their lawyers.

If you cannot agree on the division of your property, you must make an application to the Court of Queen's Bench of New Brunswick, Family Division to get your share. You should get legal advice. If you are in financial need, ask your lawyer if she/he will handle your application and take payment of the fees from the final property settlement. Legal aid assistance in family-related matters is only available in very limited circumstances.

Note: After a divorce or annulment, if you wish to make an application for a division of marital property, you must do so within 60 days of the event, except in special circumstances.

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What are my rights to the marital home and household goods?

The **Marital Property Act** gives each spouse the following rights, in ordinary circumstances:

- (a) an equal right to stay in the marital home and use the household goods until the Court declares otherwise;
- (b) an equal share of any money made on the sale of a marital home;
- (c) If the home is wrongly disposed of without your consent or without a Court order, the Court may be able to help you get the home back or get compensation for your share;
- (d) if you do not have adequate shelter, or if it is in the best interests of your child or children, you can apply to the Court for sole possession of the marital home and household goods;
- (e) in certain circumstances you can apply to the court to stop your spouse from harming the marital home or household goods;
- (f) in certain circumstances you can apply to the Court to stop your spouse from disposing of household goods without your consent;
- (g) if your spouse disposes of household goods without your consent, you can apply to the court for an order that a payment be made to you; and
- (h) when your spouse dies you are entitled to your share of the marital home, and you can apply to the Court to give you both your share and your spouse's share as well.



Does the Court always divide marital property equally?

Although the general rule is for equal sharing of property, the Court can order unequal sharing where the spouses have agreed in writing in a domestic contract to share unequally or in certain other special circumstances.

What if my spouse includes my share of marital property in a will?

If your spouse dies and leaves a will that tries to give away your share of the marital property to someone else, you can take legal action. You can make an application to the court under the Act to get your share but it must be made within four months of the death.

Does marital property include pensions?

If you are married, you are entitled to a share of any pension earned by your spouse during your marriage, even if you have your own pension from work. Your spouse is also entitled to a share of your pension. However, pension division is not automatic. Your separation agreement or divorce order must state that the pensions are to be divided, and you will need to apply to each plan separately to ask for the division.

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If a court makes an order for the division of pension under the **Marital Property Act**, the general rule is that the pension earned during the marriage will be divided 50-50, unless that would be unfair. The **Pension Benefits Act**, which covers most pensions earned while working in New Brunswick, allows couples who have a domestic contract to agree to a division other than 50-50, provided it leaves the owner of the pension with at least half of what he or she would have had if the pension had not been divided.

What about our debts?

Spouses have the right to a share of the marital property and they are equally responsible for a share of the marital debts. Those are debts which you and/or your spouse acquired while you were living together. They may include financial obligations such as mortgages, car loans, credit card bills, lines of credit, and so on. When you apply to the Court for your share of the marital property, the Court will also consider the marital debts. However, the Court may set up the final property settlement so that one spouse does not actually make payments on the marital debts.

Can we set out our property rights in a domestic contract?

Yes you can. The Act allows couples to enter into domestic contracts in order to set out their respective rights and obligations during or at the end of their marriage or their cohabitation, or at death. Domestic contracts are legally binding written agreements. Marriage contracts, cohabitation agreements and separation agreements are all domestic contracts. Domestic contracts may deal with such matters as who must pay support money and how to divide the property and pensions. However, only separation agreements can deal with the matter of child custody and access.

Who can make domestic contracts?

The following persons can make domestic contracts:

- (a) persons who are planning to get married,
- (b) persons who are married and living together,
- (c) persons who are living together and are not married,
- (d) persons who have separated after being married or having lived together, and
- (e) persons who have lived together, whether married or not, whose relationship has broken down but who continue to live together.

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Can a domestic contract change my rights and interests under the *Marital Property Act*?

Yes. In a domestic contract it is possible to change or give up rights and interests under the Act. You can agree in advance about how to settle your family law matters so you do not have to apply to a court to decide these important matters for you. However, to be enforceable, a domestic contract must obey the rules set out in the Act.

It is a good idea for both parties to get legal advice from separate lawyers before signing a domestic contract. If you did not have legal advice a court may overturn the contract.

For more information on this subject, see the booklet ***Domestic Contracts***.