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Effective Legal Support: Matrimonial Property

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Nuts and Bolts of Property in Family Law Matters

Effective Legal Support: Matrimonial Property

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THE NUTS AND BOLTS OF PROPERTY IN FAMILY LAW MATTERS

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INTRODUCTION

The most common question a family law lawyer is asked by a client is “What am I going to be left with once this is done?”

While this may appear a simple question, it most often does not have a simple answer. What clients often don't realize is that well before a lawyer can give them advice on the possible 'end result' and what property they may (or may not) receive upon separation, there are numerous other steps required.

The very first step in this process is to educate yourself and your clients. As family lawyers we tend to jump into a discussion around the production of financial disclosure documents, however the most important discussion that a lawyer can have with a client – a discussion which is sometimes overlooked - is around the topic of “What is Property?” Commonly what a client may consider to be their 'property' is not always the same as how the courts may define 'property' as owned by the client.

WHAT IS PROPERTY?

The division of property between legally married couples upon separation in Alberta is governed by the *Matrimonial Property Act*, RSA 2000, Ch. M-8¹. In setting out a legislated process to address the division of property the government has chosen to define property in the broadest possible manner to include “all property owned by both spouses and by each of them.”²

Since coming into force, much attention has been given to what is included in the above definition. On the most basic level 'property' includes anything that is owned by the parties together or separately and includes both corporeal and non-corporeal items. It includes things that you can see and touch and what most people own such as household furnishings, vehicles, and physical cash. It also includes things held by others on your behalf such as investments in a bank, intellectual property rights and trademarks and shares in companies. Property can be permanent and unmovable (such as land), or temporary and easily destroyed (such as a set of dishes).

The value, lack of value, or any disagreement about the value of an item does not factor into whether an item is or is not considered property. The courts have determined that property can include things which have no present value, and may never have any value, such as an unexercised stock option.

¹ As of January 1, 2020 the *Matrimonial Property Act* will also apply to adult interdependent relationships pursuant to the *Family Statutes Amendment Act*.

² 7(1) MPA