

DIVORCE – THE MATRIMONIAL HOME

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There is a basic premise in family law that many people do not understand:

Married couples share matrimonial property, equally

I will break this down:

MARRIED COUPLES-If a couple legally marries, there is a presumption in law that they intend to share matrimonial property equally. The corollary to that is that if a couple does not legally marry, there is no automatic presumption that the couple intended to share property, unless property is purchased jointly. (There are exceptions to this presumption in certain cases involving a joint family venture or trust claims.)

MATRIMONIAL PROPERTY – this refers to assets or property acquired during the marital period. Property owned prior to marriage is excluded and property acquired after the date of separation (by choice or by death) is also excluded. Therefore, only the acquisition of assets which occurred during the marriage is shared. Assets that you owned prior to marriage is excluded from the sharing.



The exception to this is the matrimonial home. If you own a home before marriage, and the couple resides in it after marriage, it becomes the matrimonial home, and the value of the home is divided equally between the parties after separation. This is becoming a frequent issue as more and more people are marrying later in life, or second marriages.

How can you protect your assets from becoming matrimonial property?

- Marriage Contract (colloquially known as a pre-nup). If you own a house at the date of marriage, you should consider retaining a lawyer to draft an agreement as to how you want to handle the sharing of the home or other property, in the event of separation.
- Sell the house that you owned at the date of marriage and buy another house, BEFORE you separate. This is an example of one of the strangest provisions in law. If the first house is sold and another house is purchased, the first house is no longer the matrimonial home, and the value at the date of marriage can be excluded.

Even if a couple chooses not to enter into a marriage contract to deal with property, it is wise to exchange and agree on the value of assets owned at the date of marriage, so that information would be available, if you need it. Seek legal advice if you are not sure what to do.