

# FAMILY LAW BASICS

*January 13/14, 2015*



MEMBER

TAX SPECIALIST GROUP

WWW.TAXSPECIALISTGROUP.CA

TORONTO | CALGARY | EDMONTON | VANCOUVER | MONTREAL | WINNIPEG | SAINT JOHN  
NEW YORK | LONDON | AMSTERDAM | HONG KONG | BEIJING | SHEN ZHEN | MACAO

© C/A Professional Seminars 2014/2015

1

## Family Law Basics

- Family Law Act of Ontario provides for division of property between spouses.
- Rules in Family Law Act can be varied at discretion of the Court.
- Different concepts, fair value versus fair market value.
- Legal guidance needed in many aspects.

© C/A Professional Seminars 2014/2015

2

## Family Law Basics

- Three main times/situations Family Law Act is relevant:
  - Estate planning and family financial planning (structuring to avoid spouse obtaining property)
  - Issues arising on separation
  - Issues arising on death

## Family Law Basics

- Does the Family Law Act (Ontario) apply?
- Section 15/Conflict of Laws
- Governed by internal law of place where both spouses last had their communal residence.
- Must be spouses (married to each other)
- Polygamous marriages recognized if marriage was in a jurisdiction which recognized such as valid.
- Does not apply to common law relationships.

## Family Law Basics

### Net Family Property

- The spouse whose net family property is less is entitled to half of the difference between the net family properties.
- Net family property means the value of all property on the valuation date (date of separation or date of death) after deducting liabilities and property (other than a matrimonial home) owned by the spouse at date of marriage.

© C/A Professional Seminars 2014/2015

5

## Family Law Basics

### Net Family Property

- But the following are excluded from net family property:
  - Property other than a matrimonial home acquired by gift or inheritance after marriage
  - Income from such property if expressly stated
  - Damages for personal injury, mental stress etc.
  - Proceeds of a life insurance policy received on death of the insured
  - Any property which can be traced into those above
  - Property which the spouses have agreed in a domestic contract is not to be included in net family property
  - Unadjusted pension earnings under CPP

© C/A Professional Seminars 2014/2015

6

## Family Law Basics

### Net Family Property

- Onus of proof on excluding property from net family property is on the person claiming that it should be excluded.

## Family Law Basics

### Example

- John and Jane were married in 2010. John had \$200,000 and Jane had \$100,000 of net assets entering the marriage.
- Jane received \$400,000 by inheritance.
- At January 1, 2015, the date of separation, John had net assets of \$600,000 and Jane had net assets of \$300,000.
- \$400,000 of Jane's inheritance is excluded from the calculations.
- John's increase in net family property is \$400,000.
- Jane's increase in net family property is \$200,000.
- As a result, John owes \$100,000 to Jane.

## Family Law Basics

### Issues At Death

- When one's spouse dies, if the net family property of the deceased spouse exceeds the net family property of the surviving spouse, the surviving spouse is entitled to half of the difference.
- Surviving spouse shall make an election to receive half of net family property difference within six months after first spouse's death. Otherwise, election deemed not to be made.
- During first six months, no distributions can be made from the estate except with spouse's consent or court's consent.

© C/A Professional Seminars 2014/2015

9

## Family Law Basics

- Matrimonial home cannot be protected from being net family property, even if received by inheritance, owned before marriage, or specified in marriage contract.
- Matrimonial home is a home occupied by the person and his/her spouse as a family residence at the time of separation.
- Can have more than one matrimonial home (house and cottage for example).
- Matrimonial home can be outside of Ontario and outside of Canada.

© C/A Professional Seminars 2014/2015

10

## Family Law Basics

- On property division, court can order the specific properties distributed to each spouse. Intent is to minimize disruption to the family (for example husband gets the business, wife gets matrimonial home and investments).

## Family Law Basics

### Considerations for Family Law Planning

1. Gift after marriage
2. Segregation of property excluded from net family property (gift, inheritance, life insurance proceeds)
3. Not merging assets into matrimonial home
4. Domestic contract (but stringent requirements)
5. Use of trusts (but there are limitations)

## Family Law Basics

- Family Law Act has specific rules for domestic contracts.
- Family Law Act has extensive rules which govern spousal support and child support.

## Family Law Basics

### Concluding Comments

- Many people do not care about Family Law issues, until the problems arise, and then it is too late.
- Gift after marriage is powerful planning technique, but much is unknown as to what will be accepted. For example, freeze, issuance of new common shares to father with gift to son, might be set aside by a court.
- Hard to get definitive advice.
- Sometimes, the planning comes down to “better off to do it than not to do it”, whether it ultimately works or not.
- Many Family Law disputes are settled through negotiation and mediation, rather than through the court process.