



Wealth Management  
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# Life events: Divorce

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## Financial checklist

The end of your relationship with your spouse will mean a change in some of your life goals. Your advisor can help with strategies and advice for balancing your priorities and making progress towards achieving your financial goals in your new situation. Take this opportunity to review your priorities and consider asking your advisor these questions:

- How do I make the transfer of investments to and from my former spouse?
- What happens to the beneficiaries of my RRSPs and Life Insurance?
- Do I need a new investment portfolio?
- How will my cash flow be affected by my marriage breakdown?
- Will I need a new Will?
- What about the RESPs for the children's education?
- We may have to sell our home, what are the implications?
- How will my government benefits such as OAS and CPP be affected?
- What will happen to my company pension?

## Seeking legal counsel

The first thing that must be emphasized in any relationship breakdown is the importance of seeking competent legal advice. Some splitting couples can sit down together and structure their separate ongoing responsibilities between themselves in a friendly way. However, the laws relating to relationship breakdown can be extremely complex and there are overlapping jurisdictional considerations. It makes a difference if the relationship was a marriage under federal law or a common-law which is subject to provincial or territorial statute.

The situation can be further complicated when there are children involved. As a general rule, the courts are concerned with children first and foremost. If the courts decide that a separation agreement is unfair to the children then that agreement will be overturned, regardless of what the parents have agreed. Certain spousal/children's rights under law can not be given up despite what an agreement states.

**Division of assets**—When you split up with your spouse you will need to divide your assets evenly. The division of assets upon relationship breakdown is a provincial/territorial concern and there are variations across the country depending on where you live. There are also differences depending on the

nature of your relationship (married, common law, same sex). Consequently, you are advised to consult with a lawyer familiar with the laws of your province or territory.

However, the laws across Canada do have some factors in common. Generally the law regards a marriage as a partnership and although, in many provinces, assets brought into a marriage are not usually subject to division, the increase in those assets can be divided upon a separation. In most cases, you'll be able to transfer assets between the two of you without a tax hit. Capital property (most assets) can transfer at adjusted cost base (ACB) so that the recipient spouse inherits the current ACB of the property, and there's no tax to pay on the transfer. Registered Retirement Savings Plan (RRSP) assets can transfer directly to the other spouse's RRSP without a tax hit. It's the same with assets in a Tax-Free Savings Account (TFSA). In the case of a TFSA, the transferor doesn't receive a reinstatement of contribution room.

Any family debts incurred will also be included and reduce the overall asset value. Some assets may be exempt from being divided. Again, depending on the province, these can be inheritances received, personal injury awards and life insurance proceeds. The family home is another special case. In most provinces and territories the family home is subject to division regardless of when the property was purchased or who purchased it. Tax form [T2220](#) will have to be completed and your advisor can assist you with this.

**Sharing pension assets**—Canada Pension Plan credits earned by both spouses during marriage can be combined and split without any immediate tax implications. Other pension plan assets can often be split without tax consequences, but speak to a lawyer in your province, since family law and pension law are provincial matters. With a Defined Benefit plan, (where what the pension pays you when you retire is based on a formula) in most jurisdictions the amount to be divided will be based on a lump sum payment at the time of separation as if the pension was being terminated at that time.

Pensions are designed to provide benefits to support the pension member for their retirement years. This

is why most pensions are 'locked in'. You can't simply withdraw the money. In most cases, this locking-in will also apply to the benefits transferred due to a relationship breakdown. There will be a number of options to consider with respect to the transfer of pension benefits. Your advisor can take you through what option works best for you.

You will need to contact your pension administrator when a transfer of pension benefits is required. They can assist you in explaining the options and how the transfer will be made. Special forms will have to be completed. Your advisor can also help you with this process.

**Tax on support payments**—If one parent has custody of children, then the UCCB will be paid to that parent. With shared custody, you can apply to split the payment equally between the two of you. Spousal-support payments are generally deductible to the payer, and taxable to the recipient. Lump-sum payments that reflect arrears support for prior years are generally taxed when received, but the recipient can request to be taxed as though they were received in those prior years if this works out better and if the amount that applies to previous years is \$3,000 or more (not including interest). Child-support payments are generally tax-free to the recipient and not deductible by the payer (an exception applies with some pre-May, 1997, support orders or agreements).

**Professional assistance**—Taxes are can be complex depending on your specific needs. It is important that you seek a qualified tax professional to determine what taxes will be filed and by which parent.