

# 5 Essential Steps to Selling Your Home During a Divorce.

Navigating the sale of a matrimonial home during a divorce in Ontario involves understanding specific legal and financial considerations. This guide provides an overview to assist you through this complex process.

## 1. Understanding the Matrimonial Home

In Ontario, the matrimonial home is defined as any property that both spouses have ordinarily occupied together at the time of separation. This includes not only the primary residence but can also extend to secondary properties like cottages, provided they were regularly used by the family. Both spouses have equal rights to possess the matrimonial home, regardless of whose name is on the title. This means that one spouse cannot unilaterally sell or encumber the property without the other's consent.

## 2. Options for the Matrimonial Home Post-Separation

Deciding what to do with the matrimonial home is a significant decision during a divorce. Common options include:

- **Selling the Home:** Both parties may agree to sell the property and divide the proceeds equally. This approach provides a clean break and liquid assets for both individuals.
- **One Spouse Retaining the Home:** One spouse may choose to buy out the other's interest in the property. This requires a fair market valuation and may involve refinancing the mortgage to account for the buyout.
- **Continued Joint Ownership:** In some cases, spouses may agree to retain joint ownership temporarily, often for the benefit of maintaining stability for children. This arrangement necessitates clear agreements regarding financial responsibilities and timelines.

## 3. Legal Considerations

Several legal aspects must be considered when dealing with the matrimonial home during a divorce:

- **Consent for Sale or Mortgage:** Neither spouse can sell or mortgage the matrimonial home without the other's explicit consent. Attempting to do so can result in legal challenges and potential nullification of the transaction.
- **Exclusive Possession Orders:** In situations where cohabitation becomes untenable, one spouse may seek an exclusive possession order from the court. This order grants one spouse the right to reside in the home exclusively, though it doesn't affect ownership rights.
- **Impact on Property Division:** The matrimonial home holds a unique status in property division. Unlike other assets, spouses cannot deduct the value of the matrimonial home brought into the marriage from their net family property. This means its entire value is subject to equal division upon separation.



#### 4. Financial Implications

Understanding the financial ramifications is crucial:

- **Appraisal and Valuation:** Obtaining a professional appraisal ensures an accurate assessment of the property's market value, which is essential for equitable division or buyout arrangements.
- **Mortgage Considerations:** Refinancing may be necessary if one spouse intends to retain the home. It's important to evaluate whether the retaining spouse can afford the new mortgage independently.
- **Tax Implications:** While the sale of a primary residence is typically exempt from capital gains tax, it's advisable to consult with a tax professional to understand any potential tax consequences, especially if the property includes income-generating components or has been used for business purposes.

#### 5. Steps to Navigate the Process

To effectively manage the sale or transfer of the matrimonial home:

- **Seek Legal Advice:** Engage with a family law attorney to understand your rights and obligations fully.
- **Open Communication:** Maintain transparent discussions with your spouse to reach mutually beneficial decisions regarding the property.
- **Professional Appraisal:** Hire a certified appraiser to determine the property's fair market value accurately.
- **Financial Planning:** Consult with financial advisors to assess the affordability of retaining the home or the implications of selling it.
- **Formalize Agreements:** Document all decisions and agreements in writing, preferably with legal oversight, to ensure enforceability.

Navigating the complexities of the matrimonial home during a divorce requires careful consideration of legal and financial factors. By seeking professional guidance and maintaining open communication, you can make informed decisions that align with your long-term interests.