



Family Law

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YOUR EX DOES!



Roxanne Shank
LAWYER

Q

My wife and I are separating. We jointly own the matrimonial home and a cottage and I do not want to pay any tax on the eventual sale of the properties. Is this possible?

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Without going into too much detail as to the length of the marriage, as this could potentially effect the division of property, let us assume that your marriage is over five years. Ultimately one spouse will end up paying tax on the sale of one of the properties. The Income Tax Act provides that individuals can shelter Capital Gains for the sale of a property provided that the individual owned the property and ordinarily inhabited the property. "Ordinarily inhabited" does not necessarily mean primary residence. You can designate a vacation property i.e. a cottage to be a Principal Residence. However, the Income Tax Act limits one family unit to one property as a Principal Residence in any one taxation year.

The effect of these laws mean that if you decide to assume the cottage, let us say, in 2020 and sell in 2020, provided that you both listed the cottage as your Principal Residence in your

Income Tax Returns you will then benefit from the complete exemption from Capital Gains Tax. Now if your wife assumes the matrimonial home and she sells the house, for arguments sake, in 2030, she will only benefit from the Capital Gains Exemption from 2020 through to 2030 and will be subject to capital gains from the date of purchase of the cottage through to the sale of the cottage in 2020.

The effect of these laws mean that the individual who strikes first, and sells their property, will benefit from the complete Capital Gains Tax Exemption. This could be used as a bargaining chip when negotiating settlement terms.

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