

**NAVIGATING  
SELLING  
THROUGH  
SEPARATION**

**STRAIGHTFORWARD REAL ESTATE ADVICE FOR UNCOUPLING**

**by Adam Mills**

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**PART 1:**

# **YOUR OPTIONS**

# ONE

## MOVING FORWARD

Separation is not easy. Even amicable separations can involve disappointment, lack of communication, and a failure of expectations. Realistically, the objective of separation is to allow people to part ways and get on with life separately. Unfortunately, during the process, you and your emotions are subject to a myriad of changes in family life, the home and finances.

Selling your home is not an easy task either. It also frequently involves frustration and emotional stress. Combine the two events, and you have an undertaking that requires much patience, diligence, and fortitude. Thankfully, separating couples can move forward in this challenging phase of their lives with the help of sound legal advice and an expert Realtor®.

Decisions regarding any real estate investment can be difficult, however few more so than the family home. As such, it is important to know the legalities that come to the forefront regarding real estate, in a separation action. Since legislation pertaining to family law and separation can vary from province to province, and the nuances of the law apply differently based on small variations in circumstances, professional legal counsel is your best source of information on what needs to be done to protect both parties' interests in the property.

Many questions arise when trying to sell your home - especially during a separation.

- What do we need to do to have a quick and profitable sale?
- Which one of us will choose the Realtor®?
- When is the best time to list the home?
- Who is financially responsible for the property throughout the selling process?

Knowing what to expect as you go through the process of selling can alleviate many fears or misconceptions you may otherwise have needed to navigate. In my experience, the more of these misconceptions we can remove prior to listing a home for sale, the smoother and less stressful the experience becomes.

Every separation has a unique set of circumstances, and is far more complex than real estate decision making. This book, however, focuses solely on the real estate considerations facing a separating couple with the intent to be a guide for reflection and decision making as you look to make decisions around possibly your most significant financial investments as a couple. This book is not intended to be a legal guide or advice, but rather a source of information regarding your Matrimonial home. Knowing some of the legal terminology, options and strategies for maximizing your sale price, may give you a more objective understanding of your situation.

### **Legal Considerations of Sale**

Separation can be expensive, and takes up a lot of time and emotional energy for both parties as they uncouple. When issues of separation have to proceed to a

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## NAVIGATING SELLING THROUGH SEPARATION

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court application, it can add even more financial time and emotional investment for both parties. But, if there is no reasonable way to settle the separation using mediation or through legal counsel, any disputes and disagreements between spouses will have to be decided by a court of law.

Regardless of the process couples choose to resolve the issues arising from their separation, the law is consistent in how assets and property distribution are handled. Any variation is based more on context, timing, interpretation and geography, with slight differences from province to province. Some provinces are called “community property” provinces, and others are “equitable distribution” provinces. Most provinces follow the laws of equitable distribution, which means that the equal contribution of each person to the marriage is recognized, and as such, any property acquired during the marriage will be divided between the spouses in a fair and equitable way.

In equitable distribution provinces, the court determines who receives what based on a variety of factors, such as the relative earning contributions of the spouses. In community property provinces, on the other hand, all income and assets earned or acquired during the marriage are considered to be owned equally. This also applies to all debts, no matter who created the liability. In a separation action, these will be divided equally.

Ontario is an equitable distribution province, however, the treatment of property and the division of the same may be different if you are married or in a common law relationship. Ask your lawyer which laws apply to your circumstances and he or she will advise you based on your relationship’s legal status along your combination of assets, investments, property and debt - and the timing, context and geography of each.

In addition to the standards set for the division of property, the law recognizes that the matrimonial home requires additional protections above and beyond those of other property investments, which will impact the ability to sell, encumber and the possession of the property. These are areas that need to be discussed with your lawyer so you can properly understand how these laws apply to your particular separation circumstances.

### **Mortgage Deed vs. Property Title**

Understanding the relationship between a mortgage deed and property title becomes much more relevant to couples separating. These differences might be considered semantics between couples who are continuing to share a financial future but as two individuals begin to consider separate financial realities, grasping the difference becomes essential.

Mortgages are conditional legal agreements for the purpose of buying a property (i.e. your home). The lender’s security interest is on record when the title is registered. The mortgagee (lender/bank) may obtain a foreclosure order to take possession if payments of debt are not made.

A property title refers to ownership of that property and the rights to its use. A person on the title can transfer ownership to another party but cannot transfer more than what they own. Some separating couples utilize a quitclaim deed, which transfers ownership from one spouse to another. This is where the difference becomes essential to understand, because transferring ownership does not transfer financial responsibility.

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## MOVING FORWARD

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Often, one spouse may transfer title of the home to the other thinking they are no longer financially responsible for paying the mortgage, but this is not reflective of their legal liability. Even after transferring title, the loan payments remain the responsibility of all the parties on the mortgage. In order to remove one spouse's name from the mortgage, the other spouse must obtain financing to buy out the other or use their cash assets to purchase the house outright and settle the mortgage.

Your legal advisor will be able to provide further detail and recommendations regarding any mortgages, quitclaim deeds, and title of property considerations within your separation circumstances.

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# WHAT IS YOUR HOME WORTH?

To find out What Your Home is Worth for Free

Reach us at:

**(613) 825-7653 or [info@ottawaishome.com](mailto:info@ottawaishome.com)**

This is all 100% free with no obligation. After you request your free home evaluation, we will send you a free report with information that will help you determine your home's value. We recommend printing it out and taking a drive to see the homes we've identified as comparable to yours. This will help you get an even more accurate idea of what your home is worth.

**An appraiser would charge between \$400 to \$700, but we will provide one at no cost or obligation.**

If you would like our free, professional opinion on the value of your home, we'd be glad to help. We can talk over the phone, via video conference or we can meet with you in person. We look forward to helping you! It's what we do.

Email us at [info@ottawaishome.com](mailto:info@ottawaishome.com)

Call us at (613) 825-7653 or visit our website [OttawaIsHome.com](http://OttawaIsHome.com)

Best Regards,

**Adam Mills**

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