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**The complicated issue of dividing jointly owned assets upon divorce when married out of community of property**

Where property is owned in joint ownership, each co-owner has an undivided share in such property and a right to share it.

Upon divorce, the termination of the joint ownership can be complicated and difficult to agree upon.

Each co-owner is entitled to reasonable undisturbed use of the joint property and in proportion to his or her share.

As a general rule and for instance in case of divorce, each co-owner has the right to have the co-ownership terminated.

In order to claim the termination of co-ownership when the other party refuses to do so, a party can approach the court to assist and has to be able to prove the following:

- The existence of the joint ownership;
- A refusal by the other co-owner to agree to a termination of the joint co-ownership;
- Facts are to be placed before the court to enable it to exercise its discretion as to how to terminate the joint ownership.

Let us explain the scenario by way of an example:

Parties A & B purchased an immovable property jointly, after they were married Out of Community Property with application of the Accrual system.

The parties resided in this property as their matrimonial home until the decision was reached to institute divorce proceedings. Initially both parties were in agreement that the immovable property's value would be determined and either be sold and the proceeds split 50/50 or the 1 party would reimburse the other party to the same value.

Upon party A instituting the divorce proceedings and presenting party B with the proposed settlement agreement, party B changed the terms of the proposed settlement and advised that it does not appear fair or equitable that party A receives half of the equity upon termination of ownership as party A, according to party B, did not contribute equally to the said property.

The court was asked to make a determination as to the division of the value of immovable property. Party B claimed that in light of Party A's lesser financial contributions he/she is therefore entitled to a lesser- or no share at all.

Party A did not accept Party B's proposal and accordingly asked the court to intervene and make a decision.

The court took various factors into consideration, including emphasising the importance of the traditional role of a housewife and homemaker and that it should not be under-valued because it is not measurable in terms of money.

It further confirmed that it had to be borne in mind that the joint ownership of a property purchased during the course of a marriage, and as a matrimonial home, does not stem from a commercial transaction, where the transaction can be unravelled with mathematical precision and with reference only to the financial input of each owner.

The court indeed took into consideration both parties' financial contributions, although some of it could not, as a result of the passing of considerable time, be proven.

The court concluded that, upon consideration of the matter as a whole, the most equitable outcome in those particular circumstances was that the value of the immovable property should be shared by the parties in equal shares.

Should you find yourself in a similar situation as discussed above, please feel free to contact us to schedule a consultation and allow us to assist you with this complicated issue.