

An application for the Court to make a decision in relation to matrimonial property can be made at the time of applying for a divorce and should be included on the Claim form.

If the application for a divorce is disputed, the claim must be heard in the Supreme Court. The filing fees for the Supreme Court are 20,000 vatu, and if there is a hearing with witnesses and evidence there will be a further fee of 20,000 vatu per day.

If the application for divorce is not contested, then the proceedings can be dealt with in the Magistrates Court if the amount of property in dispute is less than 1,000,000 vatu.

What if I am not applying for a divorce?

The rules above only apply when the Court grants a divorce to end a marriage. Where a couple is not married, or they can not or do not want to obtain a divorce, different rules apply.

In that situation, a person must show that they have legal title to property. This will usually depend on whose name or whose possession the property is in. If it would be unjust for the person with legal title to the property to rely on this, the Court may make an order changing ownership. You should speak to a lawyer about this.

For more information contact:

Vanuatu Women's Centre
PO Box 1358, Port Vila
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Public Solicitor's Office
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Port Vila
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The information contained in this brochure is only intended as a guide to the law and is not a substitute for obtaining legal advice. If you have any further questions we strongly suggest you seek legal advice.

Note: This information applies to people who live in, or are affected by, the law as it applies in Vanuatu.

The information in this brochure is current as at 30 June 2006.

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Family Property

*What happens to family property
when a couple separate?*



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What is this brochure about?

This brochure is for men and women who have been married but are obtaining a divorce and want to divide their property. Different rules apply to people who are not married and to people who are not getting a divorce.

There are separate brochures that deal with *Maintenance for married women*, *Maintenance for unmarried women*, *Divorce*, and *Custody of Children*.

What is family property?

Property means all of the things that a person owns, either individually or with someone else, such as clothes, household items, cars, land, houses, boats, shares, money, bank accounts and a financial interest in a business.

During a marriage, the property owned by a couple can be divided into three categories: personal property, joint property and individual property. Personal property is property that can sensibly only be owned by an individual - such as their clothes and most personal items.

Joint property is property which is owned by the husband and wife together. Most property acquired during the marriage will be regarded as joint property, regardless of whose name it was put into. If land was acquired before the marriage but built on or improved during the marriage, the court may consider this to now be joint property.

Individual property is property that is capable of being jointly owned, but is owned by one person individually. Individual property will normally have been acquired by the person before the mar-

riage or it may have been a gift during the marriage that was intended only for them alone.

When a couple separate, they need to make a decision about how their property will be divided. There may be some disagreement about whether something is individual property or joint property.

Each person keeps their own individual property when the marriage ends. The joint property must then be divided up between them.

What if we can't agree about how to divide the property?

If the couple can not agree about how to divide the property, then at the same time as applying for a divorce, they can ask the court to make an order dividing their property. The court will encourage the parties to negotiate.

If the court is asked to make an order dividing the property, it may first divide the property of the couple into personal property, individual property and matrimonial property. After this it will decide how the family property should be shared.

What law will the courts apply?

There is no written law that sets out how the courts should divide property when a marriage is ended. This means that the courts must look at old English and French law as well as custom law.

French law is quite different from English law and this brochure reflects English law. If you have a question about French law you will need to speak to a lawyer.

How do courts divide joint property?

Under English law, when making a decision about how to divide family property, the courts must firstly have regard to the welfare of any children under the age of 18. After this, the courts must have regard to all circumstances of the case, including:

- the current and future income, property and earning capacity of each party;
- each person's financial needs;
- the standard of living of the family prior to the break down or the marriage;
- the age of the parties and length of the marriage;
- any physical or mental disability;
- the contributions each party has made and is likely to make to the welfare of the family, including caring for the home and family;
- the conduct of the parties; and
- how the property can be divided to make a clean break and avoid further problems.

Is customary land matrimonial property?

In Vanuatu, customary land can only be dealt with according to customary law, and can not be divided by a court according to the rules of matrimonial property. A court may consider who owns customary land when dividing other property.

For information on disputes over ownership of customary land, see the brochure on the *Customary Land Tribunal*.

How do I apply to the Court?