A provincial grazing lease is a common interest in land with specific rules for transfer/assignment. Often Crown lands are declared to be available to the public and leases are granted. Once issued, however, they become very valuable assets and can be willed to heirs on death. When sold or assigned they can be worth tens of thousands of dollars. There is a standard form of assignment of grazing lease approved by the Minister for both individuals and corporations. The approval time of a grazing lease assignment can take upwards of 12–16 months. Normally the real estate practitioner will seek to separate any transfer closing dates on fee simple lands from the grazing lease assignment, thereby allowing some of the funds to flow to the seller, while the grazing lease consideration continues to be held in trust until the process is concluded. The purchase of the grazing lease can also be held in trust until the process is concluded.

For more information on Alberta Grazing Leases, please contact us.
When couples separate and divorce, one of the issues that must be settled is the distribution of joint property. In Alberta The Matrimonial Property Act creates a regime which governs the division of property between parties on divorce. It directs that properly accumulated during the course of the marriage to be divided equally between the parties except in rare and exceptional circumstances. The Act directs the division of the value of property as opposed to the property itself. In general, the value of property is determined at the time of trial or separation, not at the date of separation and is based on fair market value. Liabilities incurred during the marriage are generally also shareable equally. Liabilities incurred post-separation may not be.

Under the Act, matrimonial property includes, among other things, the following:

1. The family home and any other real and personal property;
2. Vehicles and equipment;
3. Bank accounts;
4. Jewellery;
5. Art;
6. RRSPs. Pursuant to the Separation Agreement these can be rolled over from one spouse to another without tax implications at the time of separation or settlement, to equalize registered investments between the parties. In the event they are to be set off against other assets, there has to be a tax discount to reflect the fact that these assets are not tax free. Typically, the discount is 20 to 25 percent.

7. Whole life insurance policies. The value of these is the cash surrender value of the insurance policy. Term life insurance policies have no value.
8. Private pension plans: There are different types of plans including defined contribution and defined benefit pension plans. A defined contribution plan is very similar to an RRSP. The value the employee receives from a defined contribution plan is divided equally.

9. Canada Pension Plan. Similar to a private pension plan, only the portion of pension credits accumulated during the marriage is considered divisible.

THE MATRIMONIAL PROPERTY ACT DIRECTS THAT PROPERTY ACCUMULATED DURING THE COURSE OF THE MARRIAGE IS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES EXCEPT IN RARE AND EXCEPTIONAL CIRCUMSTANCES.

This is defined by the amount of money in the employee’s pension account at the time of retirement. A defined benefit plan is a plan generally more often available from employers such as government or international corporate entities. In such a plan the benefit the employee is to receive on retirement is defined as a percentage of their best or last number of years’ employment income, without reference to the contributions made by the employee to the plan. A pension is generally divided on a formula calculated as 50 percent of the value of the pension multiplied by the number of years the parties were married and the employee contributed to the plan over the total number of years the employee contributed to the plan, as only the portion of the pension earned during the marriage is considered divisible.

The low interest era that Canadians have enjoyed for the past few years has made homeownership accessible and affordable for many people. It has also resulted in a substantial number of home buyers entering the market without paying a large deposit on their dream home.

Any home buyer with a deposit of less than 20% of the purchase price of their home is taking out a high ratio mortgage. In Alberta, these high ratio mortgages come with significant costs for the buyer and increased power for the financial institution. Before taking out a high ratio mortgage, home buyers should make themselves aware of the drawbacks of these mortgages and be comfortable with the potential scenarios that could come into play should they wish, or be forced to, sell the property before the mortgage is repaid.

The Second Major Difference between High Ratio and Conventional Mortgages is the Obligation the Home Buyer Has and is Required to Provide on the Loan. With conventional mortgages, only the mortgaged property is used as security. If someone with a conventional mortgage defaults on the mortgage, all their other personal assets are safe. But, with a high ratio mortgage, the buyer may be required to repay the shortfall amount that the insurer pays to the financial institution personally from any assets they have. Should a financial institution turn to an insurance policy to recoup its full loan amount when it resells the property, the financial institution will obtain judgment against the homeowner for the deficiency and turn to the insurance policy to make up the shortfall.

What are the Differences Between a Conventional and a High Ratio Mortgage?

The first significant difference between a conventional and high ratio mortgage is default insurance. Homeowners purchasing a property with a deposit of less than 20% and obtaining a mortgage from a regulated lender are required by law to take out insurance against their potential default on the mortgage. The cost of this insurance is typically 2-3.5% of the loan amount. It is included as a one-off payment at the time of the mortgage advance and the cost is added to the total mortgage loan obtained from the financial institution.

While the idea of taking out insurance may sound comforting to a home buyer, the insurance coverage provided is only for the benefit of the financial institution, the home buyer simply pays for it on the financial institution’s behalf. The insurance policy does not provide any protection for the home buyer. Should a home buyer default on the mortgage the financial institution may foreclose and take title to the property. If the financial institution is unable to recoup its full loan amount when it resells the property, then the financial institution will obtain judgment against the homeowner for the deficiency and turn to the insurance policy to make up the shortfall.

The high cost of high ratio mortgages is still applicable for the loan even if it has been transferred to a new owner. Should the new owner default before the mortgage is paid in full, then both parties will be pursued to make up the funds.

The long reach of the financial institution applies to spouses who are legally separated too. A formal separation agreement between spouses, in which one agrees to take over the property and the mortgage, does not remove the liability for the high ratio mortgage from the other spouse. Anyone separating from a spouse should seek a formal release from the lender to avoid being on the hook for the mortgage at a later date.