

PUBLICATION

Family Law: RESPs and Separation

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In a separation any Registered Education Savings Plans (RESPs) saved during the marriage for a child or children's university education, are part of the matrimonial property in Alberta and are to be taken into account and addressed in your Separation Agreement.

The RESPs acquired during the marriage are for the benefit of the kids and many couples continue contributing to the RESP Plans after the separation, for the benefit of the children in their matrimonial settlement. Typically, families will first apply the RESPs from the marriage to the costs of university once a child starts their post-secondary studies.

It is fair to divide the RESPs equally between all children for their post-secondary costs, but this decision is unique to each family and the circumstances of the children once they start their post-secondary education. Further, it is wise to budget the total RESP savings over the typical four years that the child will be attending university to obtain a degree. For example, if a family saved \$40,000 in RESPs for a child during the marriage, then \$10,000 might be cashed in each year for the next four years to help pay for a child's tuition, fees and books.

Post-separation you can have as many RESPs as you want. Regardless of the number of plans for a child, the RESP limits apply to each child, and the lifetime limit is currently \$50,000. If separated parents want to continue the existing RESP for a child or if each parent wants to set up a new RESP for their child, the total amount that can be contributed by both parents each year must be considered and the sharing of the government grants up to a lifetime maximum of \$7,200 per child presently. There must be some communication between the parents to make sure that the limit per year and the \$50,000 lifetime limit are not exceeded. We can address such arrangements in your Separation Agreement to help families continue to save for university following their separation.

Further, you should consult your financial advisor for advice on the annual contribution limits and lifetime maximum contributions to realize the grants available from the government for an RESP. We work with financial advisors during your separation to consider the best arrangements for each family to help their children with the future costs of university.

For further information regarding your matrimonial separation and the RESPs saved during the marriage to pay

for the costs of the children's university education, please contact any member of our Family Law Group.