



Marriage Contracts and Cohabitation Agreements

By Lesly Joseph, Associate, Tierney Stauffer LLP

When a marriage or long-term relationship ends, there are numerous legal issues that need to be resolved. These issues may include: custody of children, child support, spousal support, and the division of property. These issues will be resolved by the parties through the negotiation of a settlement, which will be formalized in a document called a separation agreement, or the parties will attend in Court or at an Arbitration and will have a Judge or an Arbitrator decide the issues for them.

The negotiation of a separation agreement or the imposition of a decision by a court, both involve the resolution of the issues after your marriage or relationship has ended. But what if you want to resolve these issues before your marriage or relationship ends? Certain issues can actually be resolved before you enter into your marriage or relationship or even during your marriage or relationship. If such a resolution is reached, it will have to be documented in a formal legal agreement called a “marriage contract” or a “cohabitation agreement.” These agreements are also colloquially known as “pre-nups.”

Marriage contracts apply to persons who are married or intend to marry each other while cohabitation agreements apply to non-married spouses who are cohabiting or intend to cohabit. Both types of agreements can deal with certain issues that may arise during cohabitation or on the breakdown of the relationship. These include: ownership of property, division of property, and spousal support (in certain cases). It should be noted that marriage contracts and cohabitation agreements cannot deal with other issues such as the custody of children, access to children or the occupancy of a matrimonial home.

The advantage of a marriage contract or a cohabitation agreement is that it allows you to define today what your obligations to your spouse will be in the event of a breakdown in your marriage or relationship. It allows you to protect a portion or all of your property from a claim by your spouse. It may also allow you to define what, if any, support obligations you may owe your spouse in the future.

It should be remembered that a marriage contract or a cohabitation agreement is a very special type of agreement. Courts have imposed very strict standards which must be followed if the agreement is to be relied upon in the future. The contract must be negotiated in an honest and straight forward manner. The parties must exchange complete, comprehensive and accurate financial information and both parties must have independent legal advice in advance of signing the agreement. The failure to follow these standards may result in the contract being set aside if and when it is to be relied upon in the future.

In order to protect your property and finances now and in the future should your marriage or relationship end, you should meet with your lawyer to determine if a marriage contract or cohabitation is appropriate for you.

If you have questions regarding marriage contracts or cohabitation agreements, please feel free to contact any of our family law lawyers at (613) 728-8057.