



Spousal Agreements by Kelli Potter

Prenuptial/cohabitation agreements is one of the most controversial topics in family law. Even though people start relationships with the best of intentions, statistics tell us that approximately forty per cent of all marriages end in divorce. Also, approximately twenty per cent of all couples end up living in a common-law union at some point and not all of those relationships last a lifetime. If parties separate or divorce without a prenuptial/cohabitation agreement, they may be obligated to share their property and pay some form of support to the other party.

Probably one of the biggest myths in Canadian law is the “six-month myth”. It is not true that after six months you are considered “common law” and must share assets with your partner. Most of the time, a couple must live together for three years before they are legally considered to be “common law”. In some circumstances a couple is considered to be common-law if they have lived together for one

year and have a child together. Some pension legislation also says that couples need to live together for only one year before they can share in each other’s pension credits.

What does this mean in practical terms? It means that it is important to consider whether you need to protect yourself and your assets before you start cohabiting with your partner or get married.

Parties often enter into a prenuptial or cohabitation agreement when they want to protect assets that they owned prior to cohabitation and marriage (including the increase in the value of those assets), or when one party earns a significantly higher income and wishes to avoid or limit the payment of spousal support if the relationship ends. Some situations where a pre-nuptial/cohabitation agreement is considered are:

- One of the spouses already has an estate plan that he or she does not wish to disturb (for example, in the event of their death they wish to

provide for children from a prior relationship);

- One or more of the parties has previously been married or cohabited with someone;
- One of the parties owns significant assets or a business prior to marriage/cohabitation;
- One of the spouses already owns the property that will become the the parties’ home during cohabitation/marriage;
- One of the spouses earns a significantly lower income than the other spouse;

These types of contracts can protect the assets of a spouse and/or the financial security of a spouse who earns less money. Additionally, in situations where one or both of the parties have cohabited/been married previously and one or more of the spouses must pay spousal or child support to another, a prenuptial/cohabitation agreement can serve to protect the interests of these dependent third parties.

It is important to remember that for a pre-nuptial/cohabitation agreement to be upheld by a court upon divorce or separation, certain requirements must be met. For example, the agreement must be written, signed and witnessed, each party must fully disclose all assets, debts, and liabilities and there must be no fraud, undue influence or duress as well as other factors.

One thing is for certain: It makes sense to talk to your partner about whether you need a prenuptial agreement before you move in together or decide to get married.