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FAMILY LAW

Marriage Contracts in Ontario

When a couple marries in Ontario, the law impresses that relationship with financial obligations and entitlements that are engaged in the event of a separation. Broadly stated, those latent obligations and entitlements are spousal support and sharing of property. While nobody wants to plan for or think about a future separation, a couple may modify the spousal support or property regimes by way of a marriage contract. For that reason, a marriage contract can be an effective tool in a wealth preservation strategy. While people often remark that a marriage contract somehow compromises the romance of a marriage, couples need to recognize that the mere action of their marriage imposes upon them a financial contract. If such a contract is inevitable as a result of marriage, why not ensure you have a contract that is tailored to meet your needs?

So, what contract does the law impose? Sharing of property, or equalization of net family property as it is called under Ontario's *Family Law Act*, requires couples to share the value of property accumulated during the marriage, with the exception of limited exclusions such as an inheritance or a gift from a third party. This sharing includes the increase in value of property owned on the date of marriage. On the issue of spousal support, the federal *Divorce Act* may require the spouse with greater assets or income to pay spousal support to the other, while at the same time promoting each spouse's self-sufficiency.

One of the most common property provisions in a marriage contract relates to a matrimonial home. By definition, a matrimonial home is a family residence that is ordinarily occupied by the couple at the time of their separation. If the matrimonial home was owned on the date of marriage, the owning spouse will share with the other spouse not only the growth of the value of that asset during the marriage, that spouse will share the entire value of the matrimonial home. In other words, the owning spouse loses the date of marriage credit for the value of the matrimonial home. Many couples enter into a marriage contract to ensure that this date of marriage credit is not lost.

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Adam is a partner at Torkin Manes. He practises in all aspects of family law including divorce, custody and access, property, support, and domestic contracts. Adam's focus on efficient resolution guides his practice and advice to his clients. Concurrently, Adam advocates effectively to achieve a result that is aligned with his clients' interests.

Negotiating, preparing and concluding a marriage contract is a complex, thoughtful and delicate process. A marriage contract must be in writing, signed and witnessed. It cannot deal with custody of or access to children since those issues must be determined in the children's best interests in the context of the facts existing at the time of separation. Parties must exchange full and frank financial disclosure. The terms of the contract, when applied in the context of a separation, must not generate an unconscionable financial result, such as one spouse retaining most or all of the family's financial resources, leaving the other spouse unable to support himself or herself. Spouses should obtain independent legal advice. In the absence of proper financial disclosure or independent legal advice or in the presence of an unconscionable result, a marriage contract may be set aside.

If you are contemplating marriage and wish to fully understand the rights and obligations that are created as a result of marriage, or if you wish to tailor those rights and obligations to meet your needs, we can help.