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BARRISTERS AND SOLICITORS

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Marriage Contracts and Cohabitation Agreements
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The "traditional" family unit is changing. Certainly, the "traditional" family that sparked the sitcoms in the 50s remains with us and still represents the majority of "families" in our communities. But, that model itself has changed dramatically over the years, as the roles of "provider" and "homemaker" have changed and continue to change. Another major development that has occurred is the emergence of other family unit models. As marriages end as a result of breakdown or death, we see a considerable increase in single parent families, remarriages and blended families (the "Brady Bunch" model to use another sitcom analogy). More and more people (same sex and opposite sex) are choosing to simply cohabit, often with children from earlier relationships.

These relationships are affected by the Family Law Act of Ontario and as such the termination of such relationships either through separation or death can have traumatic results, particularly for people with business assets. It is for this reason that we counsel our clients to seek legal advice prior to entering into any such relationship. Marriage Contracts, Prenuptial and Co-habitation Agreements are all similar in nature and pertain to the different types of relationships that may be entered into – we will simply use the expression "marriage contract" in this article.

When a marriage relationship ends an equalization of property takes place. A person's business assets will be included in such a division of assets. This can create an extreme financial hardship on the spouse with an interest in a business, since frequently the value of this asset is "on paper" and not liquid in nature, and yet, a financial settlement with a spouse is usually a cash transaction. For this reason, anyone with any interest in a business must give serious consideration to a marriage contract prior to entering into the relationship.

There are two common ways that business assets are usually dealt with in a marriage contract. First, the parties can agree that the spouse without the business asset will waive any rights whatsoever to that business asset in the future. Naturally, this is the harsher of the two options, but is often favoured. The second treatment is less harsh in nature, and provides that the business interest will be valued at the time of the contract and the spouse with the business interest will receive credit for that initial value in the equalization. Any subsequent growth would be subject to equalization. It is usual, if this option is used, that the "non business" spouse will agree to refrain from seizing any of the business assets to secure his/her equalization payment. An example of this second treatment may help to clarify. Prior to marriage, A has an interest in business XYZ INC worth \$100,000. B agrees in a marriage contract that upon any termination of the relationship, the first \$100,000 of the value of XYZ INC would be exempt from equalization but the balance of the value of the business interest would not be so exempt. Further, B would agree that the assets or shares of XYZ INC would never be seized or attached to secure any equalization owing to B.

The typical marriage contract also addresses many other issues such as spousal support, estate planning, the matrimonial home, and parenting (where children are involved). Since this newsletter focuses on our corporate clients, we have not addressed these other topics and have concentrated on the business asset. Suffice it to say that if you enter into marriage or a marriage-like relationship, particularly a marriage later in life, it would be wise to seek legal advice well in advance of any wedding or cohabitation. We say "well in advance" since such discussions are not very romantic and for that reason should not be entered into on the eve of the wedding!

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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