

What is a Pre-nuptial Agreement?*

****Anna Perry - 2009***

A marriage contract can be made either before or after the wedding ceremony. If it is made prior to your marriage, it is referred to as a pre-nuptial agreement or “pre-nup”. Cohabiting and prospective spouses can enter into a “cohabitation agreement” even without an immediate intention to marry.

Pre-nuptial or marriage agreements assist the couple to predetermine their respective rights and obligations both during their marriage and after their relationship ends, including:

1. valuation and division of family property;
2. spousal support obligations;
3. custody and guardianship of their children; and
4. other matters such as dispute resolution mediation guidelines.

Should I have a Pre-nuptial Agreement?

When you and your intended spouse enter into a pre-nuptial or marriage agreement, you are agreeing about matters that may never happen: the terms on which you will separate or divorce. While it is difficult – and often stressful – to discuss and decide upon matters concerning money and child-rearing when planning a wedding ceremony, it is an excellent test of your relationship. In many cultures, money and child-rearing are taboo subjects before a wedding and are seldom discussed between prospective spouses. Ironically, disputes about money and children most often lead to deep unhappiness during marriage, ending in divorce.

The best time to negotiate a fair agreement about money and child-rearing is before the wedding vows are written. Right at the beginning of the marriage, each party will know with certainty whether they share compatible financial and child-rearing goals, providing an excellent benchmark for the future.

Pre-nuptial agreements save money: costly litigation can be avoided by deciding the foreseeable legal rights and issues while everyone is still getting along well, while you have warm feelings and good communication with your intended spouse.

What if the parties are not married?

Many people mistakenly believe that a common law spouse has the same legal rights and obligations as a married spouse. This is not the case.

Under the *Family Relations Act* of B.C. a common law spouse has only the right to financial support from his or her partner. The common law spouse has no legislated property rights. Only married spouses have the right to divide matrimonial property regardless of its ownership under the presumption of equal division. Common law spouses should have legal advice about cohabitation agreements that drastically alter their legal rights and obligations.

Who should have a Pre-Nuptial Agreement?

- Parties with an estate plan or Will: The event of marrying effectively revokes a Will except if made “in contemplation of marriage.” A marriage agreement is only one step in the process of putting an estate plan in place.
- Parties who are getting married a second time: Parties entering a second marriage may carry legal and financial obligations such as child and spousal support payments from a previous marriage. Prenuptial agreements can ensure that your assets are distributed according to your legal obligations, and that your first and second family benefit fairly from the estate.
- Parties who own significant assets or a company: a spouse may become entitled to claim a one-half interest in the value of the other’s shares in assets or a company. Prenuptial agreements can protect the business parties’ interests and avoid this outcome.
- Parties who own a home before marriage: your prenuptial agreement should specify an unequal division of the value of the home in favour of the person who contributed the most to it and specify how any increase in value may be divided.
- Parties who invest personal assets, RRSPs, or family gifts towards the purchase of the matrimonial home or other substantial assets such as vacation properties.
- Parties who earn a significantly higher or lower income than their partners or who forego a career due to the relationship.
- Parties who have dependant children, elderly parents or other relatives in need: Prenuptial agreements can protect your obligations to your loved ones and help protect their financial interests.