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Chapter 1: Did You Protect Yourself with a Cohabitation Agreement or Marriage Contract?

Nobody plans to separate when they begin a relationship but divorce happens. If a separation does occur, it can be a complicated and expensive process unless you have a cohabitation agreement or marriage contract in place.

Cohabitation agreements and marriage contract are contracts that predetermine your legal rights and responsibilities if you separate. It takes the ambiguity out of a normally complicated process so the cost of separation is minimized.

A cohabitation agreement or marriage contract can be used to prevent the sharing of assets upon separation. It's a prudent move for couples who have already amassed substantial assets and want to preserve them should their new relationship end.

It's a strong decision, no matter what phase of your life you're in. Bruce Sellery, a MoneySense Columnist was once asked if 50-somethings need cohabitation agreements or marriage contracts. He replied "My advice? Call a family lawyer. Seriously."

He added, "A good family lawyer will be able to outline the issues and help write up an agreement that will protect both of you. It will be well worth the money to have peace of mind. And it will require that you and fiancé share your full financial information and talk through the big financial topics before you tie the knot. It may be an uncomfortable conversation, but well worth it."

In fact, if you're even living with someone in a committed relationship, it's worth considering. We will take a deep dive into common law relationships later in the book. For now, just know that a cohabitation agreement is a good idea.

Chapter 2: How Does Child Support Work?

The complexities of child support can muddy the waters during divorce proceedings. Arm yourself with the right information and you'll be back to smooth sailing in no time.

Here's what you need to know:

1. Child support is paid on a monthly basis by the parent who does not have primary care. It is intended to share the costs of raising the children between both parents.
2. The Federal Child Support Guidelines determines the amount of child support to be paid.
3. The payer's income is their total income as indicated in their tax return at line 150. If the children reside with each parent more than 40% of the time, an adjustment to the amount of child support is possible. Normally "set off child support" is paid. Set off child support is a payment you make to your spouse based on your income and the number of children you have.

Your spouse in turn also pays you according to the number of children and income, setting off one amount against the other. In the end, the person with the higher income pays some child support to the other spouse. Set off child support also applies to split custody situations where some children live primarily with you and other children live primarily with your spouse. In this case, payment is made according to the number of children in your spouse's care and your spouse pays you according to the number of children in your care.

In rare cases, it is possible to seek a reduction in child support if payment according to the guidelines would cause "undue hardship". This is very difficult to prove. A lawyer can assess your case and help guide you through the requirements.

4. Self-employed people may have adjustments made to their income to determine the proper amount of child support. For example, personal expenses written off by the business may be added to their income to determine child support. Please see the chapter in this book that focuses on this issue.

5. Child support is not tax deductible by the payer and does not have to be claimed as income for tax purposes by the recipient.
6. Child support can be adjusted whenever there is a material change in circumstances such as an increase in income or a change in the residence of the children.
7. Each parent has the right to see proof of the other's income once a year to determine whether there should be any changes to the amount of child support being paid.
8. Child support terminates when a child reaches 18 years old unless the child is unable to become economically self-sufficient due to health issues or they are attending school on a full time basis. An exception may be a child taking a "gap year."
9. Child support usually ends when a child has completed their first four years of post-secondary education. In some cases, it can go beyond one post-secondary degree but this is rare.
10. Post-secondary education costs are usually shared in proportion to your income and your spouse's income but can be shared equally. In most cases, the child is required to share in the costs too.
11. The costs of extracurricular activities are usually only shared if they are extraordinary. Participation in a rep hockey team, competitive swim team or teams requiring a lot of travel and expenses can be costly. These extraordinary extracurricular costs are shared in proportion to incomes but some clients agree to share the cost equally.
12. The after-tax cost of daycare, summer camps and before and after-school care is usually shared in proportion to incomes but can be shared equally. Our lawyers have a computer program to help determine the "after-tax cost". It deducts any government subsidies and benefits being received.
13. Medical and health care costs (for example, dental, orthodontic, chiropractic, eye glasses) that are not covered by an extended health care insurance plan or OHIP are usually shared in proportion to incomes or shared equally.
14. To get a divorce, the proper amount of child support must be paid according to the Federal Child Support Guidelines, unless there are special benefits being received in lieu of proper child support. For example, if the payer is taking extra debts or has given an asset to the other parent, lesser child support is possible.

15. Child Support is usually paid by post-dated cheques or electronic transfers according to the payer's paydays.

16. It is possible to seek child support from a stepparent who has been like a parent. The biological parents continue to be primarily responsible in paying child support.

The Family Responsibility Office (FRO) will collect child support but we suggest you use FRO only if necessary, as this government agency is understaffed and often frustrating to work with. If enforcement is necessary, the FRO can suspend the payer's driver's license or put the payer in jail if approved by the court, so working with them can sometimes be helpful.

Child support can be affected by the amount of time a child spends with each parent. In a shared custody situation where children are with both parents more than 40% of the time the child support amount is often reduced.

To determine the amount, first establish how much you would pay according to the Child Support Guidelines if the children were residing primarily with your spouse. Then determine the amount of child support your spouse would have to pay you if the children were primarily residing with you. When one amount is set off against the other, the amount remaining is usually the amount of support to be paid.

We say "usually" because judges hold a lot of discretion when determining child support in shared custody situations. Some judges will add a little something to the set off amount, some will use the exact set off amount and some will only reduce the amount slightly even if you care for the children more than 40% of the time. It largely depends on the judge and your situation.

To determine whether you or your spouse meet the 40% threshold, most judges just count the regular nights the children spend with each of you. For example, if the children are with you 6 out of 14 nights, they are with you 43% of the time and you have met the threshold.

As a result, negotiating a settlement of the amount of child support in shared custody situations is best handled with legal advice, and we're here to help you get it resolved. By using the Collaborative Process, you and your spouse can negotiate an amount that works for both of you.

Chapter 3: How Does Spousal Support Work?

When a couple divorces, the spouse with the higher income sometimes pays money to help support the spouse with the lower income. This is called "spousal support".

The entitlement to spousal support, the amount, and duration of payments depends on a variety of factors, including:

- The length of your relationship
- The income earning potential of each person
- Roles during the relationship
- Health of each person
- Economic impact of the separation on each person
- The property of each party
- Age of each spouse
- If children are still at home

If you and your spouse earn a similar income, your relationship lasted less than 5 years, you don't have any children and you are both healthy, there would likely be no spousal support owed by either of you.

If you are 55-years-old, suffering from poor health, you were the primary caregiver of the children and never returned to the paid workforce, whereas your spouse earns \$100,000 per year, you would have a right to spousal support.

These are obvious examples of when spousal support is owed and when it is not owed. The vast majority of cases lay somewhere in between the two examples described above.

If there is an entitlement, the next question is the amount of spousal support to be paid. The Spousal Support Advisory Guidelines (SSAG) is helpful in determining the range of spousal support to be awarded. The SSAG is a series of complicated formulas that predict the likely outcome of an application to court for spousal support. The SSAG are not legally binding because they are not included in legislation. They are simply a tool used to predict what a judge might do. In most cases, judges follow the SSAG.

Ten important facts about Spousal Support:

1. Before determining the amount of spousal support to be paid, first determine the amount of child support.

2. Spousal support that is paid monthly is tax deductible for the person paying it and the recipient must pay taxes on it as if it was income.
3. A lump sum of spousal support can be paid instead of monthly payments.
4. Lump sum payments of spousal support are not tax deductible so this needs to be taken into consideration when determining the amount. Generally, spousal support is paid somewhere between 1 year for every 2 years of relationship to a maximum of 1 year for every 1 year of relationship.

So, depending on your circumstances, if you have been married 10 years you might receive spousal support for between 5 to 10 years.

5. If you have been married for more than 20 years, the potential for spousal support will always exist.
6. If the recipient's age plus the years of marriage exceed 65, then spousal support may be payable forever.
7. Common law partners can seek spousal support, but only if the relationship lasted more than 3 years or you had a child together.
8. The recipient of spousal support has an obligation to use their best efforts to become economically self-sufficient as long as it is practical to do so. If they do not, it is possible for an income to be allocated to them and the amount of spousal support is accordingly decreased.
9. The payor of spousal support cannot quit a job or become voluntarily under-employed to avoid paying spousal support. Spousal support is paid based on the realistic potential to earn income even if you choose to do otherwise.
10. Spousal support is complicated. A qualified lawyer can help you negotiate a reasonable settlement using the Collaborative Process.

Chapter 4: What Happens to My Home?

Should We Sell the Matrimonial Home?

Clients often assume that their home has to be sold and many questions arise. Should you stay in your home? Can you manage the mortgage payments? Is it better to start over? Selling may seem like the logical choice, but there are other options to explore.

Consider the following:

1. One person can purchase the other person's interest in the home. With this option, you may need to increase your mortgage or secure an additional source of financing.
2. One person can continue to reside in the home and then later sell it when some time has passed. This may allow the market and your finances to improve.
3. Consider the whole financial picture. You may be able to keep the home if the equity equals the value of your spouse's pension, RRSP or cottage, creating equal assets for both of you.
4. Before selling your home, consider where you will go and the costs. It may be that the home is less costly than purchasing another or renting.
5. Even if you can afford to stay in the matrimonial home, you may want a fresh start in a new place where you can create new memories.
6. Remember; when you sell your home, you usually have to pay 3% to 5% commission to the real estate agent and another \$1,000.00 in legal fees.
7. Many of the homes listed for sale are the result of a separation or divorce.
8. After paying support, the home may be too costly for the payer and the support recipient may not be able to afford it either. This is common. Remember, you are establishing two homes with the same amount of income that you once used to finance a single dwelling.

Usually, both clients must decrease their lifestyles to accommodate the change from one home to two homes. As a result, both clients usually have to downsize. This is the reality of divorce.

9. If the home is jointly owned and increases or decreases in value after the separation, the increase or decrease is jointly shared with your spouse.

10. Don't buy a new home until you have a separation agreement in place.
11. If you and your spouse cannot come to an agreement regarding the home, a judge in Family Court will order it sold.
12. Instead of going to Family Court, use the Collaborative Process to negotiate a fair and creative arrangement regarding the home.

Who Pays the Home Expenses?

There are no laws that specifically deal with the payment of home expenses during the time between a separation and a court order or agreement. The resolution of this issue depends on a variety of factors, including your incomes, debts, the support obligation and who is living in the home. Our lawyers can provide advice that meets the specific needs of your unique situation.

The following is a list of principles that may be helpful.

1. If you are living in the house and your spouse has moved out, generally, you should pay the utilities and home insurance.
2. Protect yourself. Don't let a petty argument about the utilities result in a ruined credit rating.
3. If you and your spouse live in the house together, you can equally share the cost of the utilities or divide it in proportion to your incomes.
4. If one of you is paying more of the debts, you may decide to share the cost of utilities unequally too. You can be creative.
5. Mortgage payments are treated differently than utility payments because you are protecting the value of an asset. As a result, you share the mortgage payments even if you're not in the home.
6. "Occupation Rent" is money paid by the person living in the home to the person who has moved out. Generally, the amount owed is the fair market rent for the home less fifty percent (assuming you own the home jointly). Often, if the person in the home is paying the mortgage (a joint debt), it is approximately equal to the amount of occupation rent owed. So, it's awash. Our lawyers can help you consider whether there is occupation rent owed in your situation.
7. Until the house is sold, sometimes the cost of the home (utilities, mortgage, insurance, and minor maintenance costs) is paid instead of support payments.

8. If you are hoping to keep the home, you should hold off on doing any major maintenance or renovations until you have a separation agreement in place to ensure you will get ownership of the home.
9. If the home is jointly owned and is going to be sold, any cost incurred to prepare it for sale is shared equally since both of you will enjoy the benefit when the home is sold.
10. Keep track of what you are paying so it can be sorted out fairly.
11. In Family Court, the judges are restricted in what they can do. So consider using the Collaborative Process instead. You can creatively develop an arrangement that works for both parties.

Chapter 5: What is Property Equalization?

Ontario, the Family Law Act uses a formula to determine how much needs to be paid by one spouse to the other so that you and your spouse end up with the same net property upon separation. The formula is illustrated below:

1. Add up your assets on the date of separation.
2. Subtract your debts on the date of separation.
3. Subtract any gifts from third parties, inheritances or proceeds from a personal injury claim received during the marriage which were kept separate and are still in existence on the date of separation.
4. Subtract your assets less any debt you had on the date of marriage.

The resulting number is called your Net Family Property (NFP). Your spouse does the same calculation. If your Net Family Property number is higher than your spouse's number, you owe half the difference so as to make the NFP's equal.

Here is an example:

ASSETS ON DATE OF SEPARATION	HUSBAND	WIFE
Home (Jointly Owned) worth \$380,000	\$190,000	\$190,000
Cars (Fair Market Value)	\$30,000	\$12,000
Pensions	NIL	\$260,000
RRSP (deduct 25% for taxes)	\$210,000	\$25,000
Snow mobiles (Fair Market Value)	\$5,000	NIL
Husband's business	\$100,000	NIL
Total A	\$535,000	\$487,000

DEBTS ON DATE OF SEPARATION	HUSBAND	WIFE
Mortgage	\$80,000	\$80,000
Visa	\$10,000	\$7,000
Car Loan	\$8,000	NIL
Total B	\$98,000	\$87,000
GIFTS, INHERITANCES, PERSONAL INJURY CLAIMS	HUSBAND	WIFE
Snow mobile - Gift From Parents	\$5000	NIL
Total C		
ASSETS LESS DEBT ON DATE OF MARRIAGE	HUSBAND	WIFE
Pension	NIL	\$25,000
RRSP	\$40,000	\$5,000
Car	\$3,000	\$4,000
Car Loan	NIL	(\$2,000)
Total D	\$43,000	\$32,000

To Summarize:

	HUSBAND	WIFE
Total A (Assets)	\$535,000	\$487,000
Minus Total B (Debt)	(\$98,000)	(\$87,000)
Minus Total C (Gifts, Etc)	(\$5,000)	NIL
Minus Total D (D of M)	(\$43,000)	(\$32,000)
Net Family Property	\$389,000	\$368,000

DIFFERENCE \$389,000 - \$368,000 = \$21,000

EQUALIZATION OWED BY HUSBAND TO WIFE IS \$10,500.00!

Once the husband pays the wife \$10,500.00, each will have \$378,500. In this example, the home is jointly owned.

If the husband wants to purchase the wife's interest in the home, he would have to pay his wife the equalization of \$10,500 plus pay her for her one half of the interest in the home. This is calculated as \$190,000 minus the mortgage of \$80,000 equals \$110,000. So, the husband would have to pay the wife \$110,000 plus \$10,500 for a total of \$120,500. The husband would then own the house solely and pay out his wife.

The husband and wife keep the assets and debts in their own names. Of course, in this example, they may decide to sell the home and divide the proceeds equally or adjust the assets or debts (the husband taking an extra debt or giving the wife an asset) so as to equalize the numbers.

An inheritance, gift from a third party or payment for a personal injury which is received during the marriage but used to pay joint debts or invested into a jointly owned asset or is spent, cannot be deducted. One of our lawyers can help determine if you have a deduction.

The reason debts were incurred does not matter except when used for illegal purposes. Your debts (meaning the ones in your name) are yours and your spouse's debts remain your spouse's debts. Jointly owed debts are shared. Everything is balanced out by the equalization process. If you have more debts than your spouse, your spouse may have to make an equalization payment to balance everything out.

In this example, the value of the husband's business may be an issue. A Certified Business Valuator may be needed to determine the value for equalization purposes.

Some clients get confused because they want to equalize each asset or each debt. You have to look at the whole picture, using the formula above, and not look at individual assets or debts.

In rare cases, it is possible to ask for an "unequal equalization" if ordering an equalization payment according to the normal formula would be "unconscionable."

Chapter 6: How Do We Divide our Property and Debts

Need help determining accurate values for your assets and debts as part of the equalization process?

There are two important factors to remember:

- Ensure you have the correct dates for your documentation (date of separation and date of marriage).
- Ensure you use the fair market value (not the retail price or replacement cost).

Here are 10 other ways to place value to your assets and determine debts:

1. For bank balances, RRSP's, loans (lines of credit, car loans, mortgages) and credit card balances, obtain copies of bank statements, RRSP statements, loan statements and credit card statements that contain data for the date of separation and the date of marriage.
2. To determine the value of an automobile, an appraisal can be done at a dealership. You can also go to the library and look up the "black book value" of the car. Make sure you know the year, make, model and mileage.
3. For household contents, determine the fair market value of each item. This is the value of the item if you were to purchase it at a garage sale. You can estimate the value on your own but with significant disputes, we can arrange for an auctioneer to come to your home and complete and appraisal for you.
4. A home appraisal will determine the fair market value of the home. An appraisal can be done by a real estate agent or by a certified appraiser. The agent will be less expensive than the certified appraiser but will be less persuasive.
5. The value of a privately owned business is trickier. Often, privately owned businesses are valued by a Certified Business Valuator. The cost of such appraisals can range from \$7,000 to \$12,000 or more depending on the complexity of the business.

6. The value of publicly traded stocks and bonds can be determined from the value of the stock at the close of the day on the relevant dates.
7. Pensions are usually valued by the pension administrator. There are many complicated forms to complete in order to get the pension appraised. If you work for a company that is registered federally like Air Canada or CP Rail, you will need to get an actuary to appraise your pension.
8. Stock options are very complex to appraise. But we have connections with experts in Toronto who can complete an appraisal.
9. Cash surrender value is the value of your whole life insurance policy. Your insurance agent can provide a letter stating the cash surrender value.
10. Getting your divorce finalized? Priceless.

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