

Should my partner and I get a prenup?

by: Jill Giesbrecht, Associate

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The term “prenuptial agreement” refers to an agreement signed by two partners before their marriage that sets out their property and support arrangements in the event of separation or death. This type of agreement may also be referred to as a “cohabitation agreement”, “spousal contract” or “post-nuptial agreement,” depending on what stage of the relationship the partners are in. Though the title of the agreement may vary, many partners enter into these agreements for similar reasons. For the purposes of this article and ease of reading, “prenuptial agreement”, “cohabitation agreement”, “spousal contract” and “post-nuptial agreement” are referred to as a “spousal contract.”

The short answer to the question “*Do I need a prenup?*” is “*It depends*”. In order to determine whether you and your partner should enter into a spousal contract, it is important to understand the reasoning behind these types of agreements.

A spousal contract is an agreement that partners enter into in order to define how their assets and debts will be divided in the event they separate or if one of them passes away while they are still cohabiting or married. A spousal contract may also include terms regarding support that will or will not be paid by one party to the other in the event the parties separate.

A spousal contract does not typically include any terms regarding parenting arrangements for children in the event of separation, as parenting arrangements can truly only be agreed upon once separation has actually occurred. The idea behind entering into a spousal contract is to ensure that in the event of a relationship breakdown or death, there is no conflict, or there is reduced conflict, surrounding the division of property and support claims.

A spousal contract is also a means to “opt out” of the legislative provisions regarding property division. The legislation states, in simple terms, that in the event of separation or death of one partner, both partners are entitled to an equal division of their family property. In the event one partner leaves the relationship with a higher net worth than the other partner, they owe the other partner an “equalization payment.”

For example, if A has a shareable net worth of \$500,000 and B has a shareable net worth of \$100,000, A owes B an equalization payment of \$200,000, so that both A and B walk away from the relationship with a net worth of \$300,000. The equalization of family property is more complex than this, but the bottom line is that the legislation in Manitoba provides an equal division of most assets and debts (there are some exceptions) acquired during a common-law relationship or marriage. So, partners may enter into a spousal contract to opt out of this legislative entitlement and agree to an alternate division of their assets and debts that they will abide by in the event of separation or death.

Additionally, a spousal contract can be used to opt out of spousal support provisions under the law. The legislation states that one partner may be entitled to receive monthly or lump sum spousal support from the other partner in the event of separation. Whether or not spousal support is payable is case dependent, but a partner may have a claim for spousal support in the event of separation. Therefore, partners may enter into a spousal contract to “waive” their right to claim or receive spousal support in the future, or to agree to a specific form or amount of spousal support to be paid in the event of separation.

It is wise to consider whether a spousal contract is right for you and your partner, but whether one is needed is dependent on your situation. You should consult your lawyer to discuss a spousal contract if you are considering it. If you decide to enter into a spousal contract, the contract can be customized to meet both your and your partner’s wishes given your specific circumstances.

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