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Prenuptial Agreements

Power Play Blog 2.3

So, you have made that big decision...you're getting married. Exciting for sure, but in some ways a bit scary. Financial discussions are always a bit tricky and introducing a marriage contract or prenuptial agreement into the picture could be even more daunting. But it doesn't need to be that way. Let's examine and clarify some of the major issues when having that discussion.

By discussing finances up front, both parties enter into the marriage with eyes wide open. There are several key areas to discuss and information to share before the big day. They include income, spending habits, existing debt, short- and long-term savings and investment goals. There should also be discussion and agreement about the spending limit beyond which each partner checks with the other before making a major purchase. There's also the issue of whether or not you should have separate, joint or a combination of banking and investment accounts. It is a proven fact that divorce is a leading cause of bankruptcy, so having a prenuptial agreement in place is a good idea.

In 2017, an Ipsos survey found that only 8% of Canadians and 14% of Americans have a marriage contract in place. So, what's the cause for hesitation? Well, for one thing, prenuptial agreements are not seen as a social trend. There is also a strong belief that having that discussion is a "romance killer" and that it's only for the extremely wealthy. The fact is, having a discussion about what assets each partner will bring into the marriage, as well as future earnings or assets, and how those would be divided in the event of a divorce, can be extremely valuable.

A basic element of family law states that everything you own before a marriage is yours, and that the wealth accumulated during your marriage is to be divided equally between spouses in the event of divorce. But we all know life and emotions can get in the way of even the most harmonious of relationships, so having a plan of action makes good sense.

There are several reasons why a couple may decide to create a marriage contract, or prenuptial agreement. A spouse who is wealthy or has an asset base that is increasing in value may wish to avoid having to account for an increase in wealth on a marriage breakdown. A marriage contract can also establish arrangements for financial support ahead of time, should the relationship come to an end. In addition, a marriage contract is a valuable vehicle for dividing property and money earned during the marriage.

Two of the more common issues that must be sorted out during a divorce are the entitlement to spousal support and the division of family property. There are cautions however; Section 56 of the Family Law Act in Ontario for example, allows the court to set aside a marriage contract for certain specific reasons: If one party did not disclose significant assets, did not understand the nature of the contract, or if anything around the signing of the contract could be deemed as "unfair".

We recommend drawing up the documents using the services and expertise of a qualified legal representative – preferably someone familiar with family law regulations in the jurisdiction where you will be living. A good attorney can help you both determine if this document is appropriate to your unique situation. It is essential to make sure the marriage contract aligns with any trust or estate plans (including a will). In law, a prenuptial agreement can trump the will, so a good estate planning lawyer is essential in understanding the complete package and the reasons for entering into, or not entering into, this agreement.

There has been a lot of retrospective writing during this pandemic about what the “old me” would tell the “young me”. In 2018 during the draft in Dallas, I found a unique store close to the arena that sold a book of letters you could write and postdate for your kids/grand kids to read in the future. Here are the top 5 things I wrote about to tell my two grandsons (I actually sealed them and have them appended to my will):

- Live and love according to your own definition, with respect and dignity.
- Find your passion and pursue it; whether it be a job, a career, a hobby... anything – just make sure you are true to yourself and your passion.
- Define what risk means to you...in anything – fun, work, investing – and live within those parameters.
- Never stop learning... EVER!
- Make a will and powers of attorney; review and update them often.