

## Keep the House: Get a Marriage Contract!



**By Brian Madigan LL.B.**

Do you have to give away the house just because you get married?

The issue of the determination of the proper division of family assets under the *Family Law Act* can be confusing.

However, the parties can agree to enter into a marriage contract prior to the marriage which deals with the disposition of property following a breakdown in the marriage.

The parties are rather unrestricted in terms of their agreement. Really, there is just one condition. They cannot eliminate the rights under the *Family Law Act* when it comes to the matrimonial home. Those rights are set out in Part II of the ACT and deal with “possession” of the matrimonial home. Very specifically, they do not deal with either ownership, or entitlement to value.

So, if the agreement says that the spouse should get 10% of the net family property, then, a deal is a deal, and the spouse gets 10% of the net family property. This includes the value of the matrimonial home.

You have to remember here, that we are talking about the entitlement to compensation. Both possession and ownership are other factors.

If there were no marriage contract, then the result would be different. In ordinary circumstances a spouse would be entitled to:

- 1) one half of the **increase** in the value of the family assets, and
- 2) one half of the **value** of the matrimonial home.

There are many reasons why the above result might not apply in any actual case. So, it would be very wise to be cautious and simply indicate that a client should seek legal advice.

Accordingly, if you want to avoid the inevitable one half of the value of the matrimonial home division, then you will have to have a marriage contract. Consult a lawyer, well in advance so that your rights and obligations can be reduced to writing!

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