

Your Money

Managing Your Finances After A Divorce

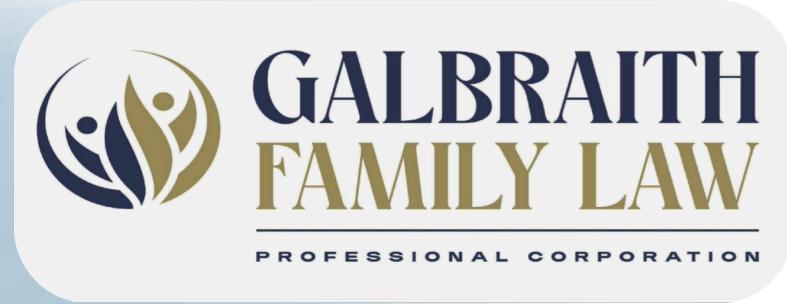


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Chapter 1:

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 occurs, it can be a complicated and expensive process unless you have a cohabitation agreement or marriage contract in place.

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

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

It's a good decision, no matter what phase of 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."

It's worth considering even if you are in a committed relationship and living with someone. We will take a deep dive into common law relationships later in this 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 used to jointly share the costs of raising the children.
2. The Federal Child Support Guidelines determines the amount of child support to be paid.
3. The payer's income is their total income indicated on line 150 of their tax return. 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. In turn, your spouse 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 be subjected to further adjustments to their income to determine the correct amount of child support. For example, personal expenses written off by a business may be added to their income to determine child support.
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 is entitled to see proof of the other’s income once a year to determine whether changes should be made to the amount of child support 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 also required to share in the costs.

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 costs are shared in proportion to the incomes of the parents, 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 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 on extra debt 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.
17. 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.

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."

Entitlement to spousal support, the amount and the 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.

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

Though these are obvious examples of owed spousal support, the vast majority of cases lay somewhere in between.

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 treat it like an income and pay taxes on it.
3. Instead of monthly payments, a lump sum of spousal support can be paid.
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 a relationship, to a maximum of 1 year for every 1 year of a relationship.

Depending on your circumstances, if you have been married 10 years, you may receive 5 to 10 years of spousal support.

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 exceeds 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 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. Our lawyers can help you negotiate a reasonable settlement.

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, an additional source of financing or an increase in mortgage may result.
2. One person can continue to reside in the home and later sell it when some time has passed. This may allow the market and personal finances to improve.



3. Consider the whole financial picture. One person may be able to keep the home if the equity equals the value of the spouse's pension, RRSP or cottage, creating equal assets for both individuals.
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, selling a home results in the payment of 3% to 5% commission to the real estate agent and \$1,000 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.
9. 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.
10. 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.
11. Don't buy a new home until you have a separation agreement in place.

12. If you and your spouse cannot come to an agreement regarding the home, a judge in Family Court will order it sold. The judge cannot order one party purchase the other's interest in the home.

13. 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 income, 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, hold off on 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 but will be sold, any costs incurred to prepare it for sale is shared equally.
10. Keep track of all payments so it can be sorted out fairly.
11. In Family Court, the judges are restricted in what they can do. Consider using the Collaborative Process instead. You can creatively develop an arrangement that works for both parties.

Chapter 5:

What Is Property Equalization?

In Ontario, the Family Law Act uses a formula to determine how much one spouse will pay to the other so you both 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), and a calculation is done for each spouse. If your Net Family Property number is higher than your spouse's number, you owe half the difference 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 20% for taxes)	\$210,000	\$25,000
Snowmobiles (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
Snowmobile - 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!

Once the husband pays the wife \$10,500, 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 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 solely own the home.

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) to equalize the numbers.

An inheritance, gift from a third party or payment for a personal injury that is received during the marriage that is spent, used to pay joint debts or invested in a joint asset 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?

Consider two important factors:

- 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, RRSPs, 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. With significant disputes, we can arrange for an auctioneer to come to your home and complete an 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. An agent will be less expensive than a certified

appraiser but will be less persuasive. It is best to share the cost of a certified appraiser.

5. The value of a privately owned business is tricky. Often, privately owned businesses are valued by a Certified Business Valuator. The cost of such appraisals can range from \$7,000 to \$20,000 or more depending on the complexity of the business. Without an appraisal, you cannot determine the true fair market value of the company.
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 valued by the pension administrator and are initiated by completing a complicated set of forms. If you work for a company that is registered federally, like Air Canada or CP Rail, you will need an actuary to appraise your pension. Without the valuation, you cannot determine the value of your pension. The pension statements provided by an employer do not show the value for separation purposes.
8. Stock options are difficult to appraise, but our network of Toronto experts can help 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.

Chapter 7:

How Do Common Law Separations Work?

Common Law Relationships Among Older Couples

Common law relationships are on the rise in Canada. It's become popular for people to live together before marriage, and they sometimes choose common law instead of marriage. Many older couples have taken this route.

Typically, older common law couples are people who have been married, have children, and have separated or experienced the passing of a spouse.

They often hold substantial assets, which complicates things when they enter a relationship and decide to live together. Often, it's their children who urge them to consult a lawyer and sign a cohabitation agreement. They are worried that mom or dad's assets might have to be shared with the new common law partner. The couple will negotiate a cohabitation agreement to protect their assets should the relationship end.



Sometimes, the cohabitation agreement stipulates that the other party has a claim to a certain percentage of the wealthier person's assets after a certain period of time. For example, 20 percent of the assets will be included after they have been together for five years, and if they have been together for more than 7 years, it increases to 35 percent. If they have been together for more than 10 years, it's 50 percent.

These agreements are more likely to be upheld by the court because they are seen as a compromise. It's not one-sided because of the clear intention to proportionally share certain assets over time. It is also more likely to be upheld in court when compared to an agreement where someone keeps all of their assets and the other person gets nothing.

The agreement creates clarity and mutual understanding between partners with well-established properties and assets. They now know where they both stand, a situation that creates reassurance for both the couple and their adult children.

After Death

In the event of a death, a common law spouse does not have the same rights as a married spouse if their partner dies without a will. A married wife or husband has the automatic right to receive the first \$200,000 of the assets of the deceased, plus a percentage in proportion to the number of children. This is not the case for the unmarried spouse.

If a person passes away without leaving a will and they have no husband or wife by marriage (common law spouses don't count), the assets automatically go to their children. If there are no children, then the assets go to the next of kin, such as parents and siblings. The only way for a common law spouse to receive a share of the estate would be to prove financial dependency on the deceased spouse. They can also prove they are worthy due to their contributions to the acquisition, preservation or maintenance of the asset (this is called a constructive trust claim) or by proving they

had a “joint family venture” with the deceased. In this case, a share in the estate may be awarded at the discretion of the judge.

A judge’s order is difficult to obtain. Determining the rights in such a situation is significantly different between common law spouses and married spouses.

Though common law partners sometimes agree to name one another as the beneficiary in their wills, either party can change their will at any time without the other person’s consent or knowledge. A cohabitation agreement is a good way to ensure rights and claims to an estate are secure, whether it is in a will or not. This would protect you upon separation and death.

If you do not have a cohabitation agreement, consider keeping track of receipts, as the division of property is based on ownership. If you retain the receipts to prove that you purchased the car or the piece of art, claiming that asset will be easier in the event of a separation or the death of your partner.



Chapter 8:

How Do I Determine Support If My Ex Is Self-Employed?

Determining income is the first step toward determining child support and spousal support. This is easy to do for employees. The challenge is determining the income for people who are self-employed.

Self-employed people often minimize their taxes by writing off as many expenses as possible. The more expenses they write-off, the less the profit they report to the government and the less they pay in personal income taxes. It makes sense and cents.

When it comes to determining income for support purposes, some of the soft expenses may be considered unacceptable and will be brought back into income. Typical soft expenses are cell phones, home offices, car, entertainment, restaurant meals and home office expenses. Typical hard expenses are advertising, rent for office space outside of the home, and employees.

The self-employed person needs to prove that the expense is necessary to generate an income and is solely related to the operation of the business. The support recipient wants to have the expense disallowed and needs to prove that the expense is not related to the operation of the business, but rather is a personal benefit bestowed on the self-employed. This requires an examination of the business financial statements.

For example, let's say that the self-employed person writes off his cell phone as a business expense yet he uses the cell phone 50 percent of the time for personal calls and the annual cost of the cell phone is \$2,000. Fifty percent of the cell phone cost could be added to his income, but that's not the end of the story.

There will be an additional amount assigned to the self-employed to account for income taxes an employee would have to pay in order to have \$1,000 left over for his cell phone expense. This is called “imputed income.” So, if the self-employed person’s tax bracket is 40 percent, then \$1,667 would be added to his income (imputed) to take into account an employee would have to earn that amount to net after taxes \$1,000.

This sort of determination won’t affect the self-employed person’s income taxes in any way. Canadian tax-collectors don’t come to family court or look at privately negotiated separation agreements.

Once income for support purposes has been determined, the amount of spousal support and child support can be determined. Also, the new income amount will be used if any child-related expenses are shared in proportion to income.

One way to resolve such issues is through the Collaborative Process. It is a private and effective negotiation process when compared to Family Court, where all of your records will become publicly available.

The determination of income of self-employed people can be a difficult process. Every case is unique. Sometimes, we hire a chartered accountant to assist with the analysis.

Chapter 9:

Financial Lessons I Learned from My Divorce

With first-hand knowledge from his own divorce in 2003, check out some of the things Brian Galbraith, owner of Galbraith Family Law Professional Corporation, learned from his own personal experience.

1. Keep a separate bank account for support payments and set up an automatic transfer from your main account. It will allow you to easily keep track of support. The recipient can then cash the cheques from that account at any time.
2. Don't sweat the little stuff. You can easily replace household contents and smaller things.
3. Buy second-hand stuff. It is a lot less expensive and just as good as new.
4. Don't hoard the kids' stuff. Your kids will want to take stuff from home to home. It may be frustrating for you but it makes life easier for the kids.
5. Start investing in a Registered Educational Savings Plan. When your kids go to university, it will make the costs more manageable.
6. Cars are a huge waste of money. Downsize now. You can save on gas, insurance and car payments. Park your ego.
7. Don't mess around with disclosure of assets and debts. Save yourself money by collecting the documents requested by your lawyer without forcing them to chase you for them.

8. The more you negotiate on your own, the less you spend on legal fees. Get legal advice along the way so you don't negotiate a bad deal for yourself.
9. Let go of control. Your spouse can spend their money as they determine appropriate.
10. Both people will suffer a decrease in lifestyle. In time, you will recover.
11. The Collaborative Process is better than going to Family Court. It is less expensive, faster and you keep control of the process.
12. Dating can be expensive. It can lead to remarriage and more children.

For more information or to book a consultation with one of our lawyers, please go to our website: www.GalbraithFamilyLaw.com.