

A marriage contract is a useful tool if you have assets or interests you wish to protect before getting married. In fact, couples who discuss financial matters in a clear and honest way with each other prior to marriage have a mature and realistic approach to their relationship. It doesn't have to be a negative thing. For example, if one partner has interests in family business or has been working with a partner who wants to ensure that the partner's spouse does not acquire interest in the business, a marriage contract is a practical way to do that. And in the end, you want to know that the time and money spent on the negotiation of the agreement will pay off with a tight and enforceable contract in the event of separation. Cohabitation agreements and marriage contracts, (colloquially known as "prenups") are one of the most frequently challenged documents in family law.



The most important thing to ensure that an agreement is valid and enforceable is to be certain that each person has had independent legal advice and fully understands the nature and consequences of every term in the agreement. I cannot count the number of times a client has come to my office after separation, with a copy of the marriage contract, telling me that he or she didn't have independent legal advice and didn't fully understand the implications of the agreement or that the contract was presented to him or her only days before the wedding. There is enormous pressure on the person being asked to sign an agreement, as though his or her loyalty or commitment to the marriage is being questioned if they refused to sign.

It takes little imagination to see how this could result in a strain on the relationship in the very early stages, when both partners are looking forward to their future together.

It seems to me the most appropriate way to deal with a marriage or cohabitation agreement is to use a collaborative approach. Both partners meet with their counsel at a four way meeting to have a frank discussion about the reasons for the agreement and the potential pitfalls of signing the agreement so that the couple enters into the agreement fully committed to its terms and both can rely on it for making future decisions. It takes time to get it right. I will not act for a client on a marriage contract or cohabitation agreement without a four way meeting, and allowing the time for the parties to reflect on the draft before signing.

Do's and don'ts for the negotiation of a marriage contract:

DO:

- Allow two to three months prior to the wedding to negotiate and finalize the agreement.
- Ensure both of you have legal counsel (preferably collaboratively trained lawyers) who will help both partners develop options and scenarios that meet the couple's unique needs.
- Engage the assistance of a financial neutral if there are business interests or complex finances that the other party needs assistance in understanding.
- Be realistic about future needs and think about the "why" of each term in the contract.

DON'T:

- Rush into a contract that you don't fully understand.
- Sign without independent legal advice that is clear and thorough review of the terms.
- Sign on the eve of the wedding. A marriage contract can be entered into any time before or during the marriage.