

From Canadian Business magazine, October 26, 2009

Prenup agreements

Mapping out a prenup

The Question: I'm about to get married for the second time. How do I ensure that my children and my new wife won't ever have to duke it out over my estate after I'm gone?

By Bryan Borzykowski



Mapping out a pre-nuptial agreement is never particularly romantic. But it can be especially tricky when children from previous relationships are involved. Winnipeg-based engineer John Lang found this out the hard way. When Lang (not his real name) married his second wife 22 years ago, he wanted to guarantee that his sizable estate would be fairly divvied up among his new wife and his three children upon his death, so he drew up a pre-nup in which he distributed assets of comparable value among them. Easy enough. Except in the two decades since, Lang's net worth has grown significantly, and some of his assets appreciated much faster than others. If he died today, his wife would inherit significantly more than his kids. Lang now finds himself in the unenviable position of having to revise the agreement.

The dilemma of how to protect everyone in a blended family situation is an increasingly common one. Typically, unless special arrangements have been made, the assets accumulated during any marriage are divided equally in the event of a divorce. When one spouse dies, the general rule is that the entire estate rolls over to the surviving spouse. Problems tend to arise, however, when there is friction between the children of the deceased and the remaining step-parent.

Experts say the key to avoiding future family brawls is clear premarital communication. Sit down with your partner and open the books. "It's the step most people skip over," says Frank Wiginton, a CFP with Toronto's TriDelta Financial. "Find out where each other is at financially, and work toward a common understanding."

In most cases, that understanding should include two words: pre-nuptial agreement. Even if you're not wealthy. Considering that 60% of second marriages end in divorce, a pre-nup is the best way to protect your kids' inheritance. It should detail not only who gets which assets, says Deborah Moskovitch, author of *The Smart Divorce*, but also how family heirlooms will be distributed. "Keep the china set or grand

piano in the family,” she says. “That gives children a sense of comfort.”

If not done correctly, splitting up even simple assets can create major headaches. For instance, be sure to divide your estate using percentages, not dollar amounts. Lawyers often ignore inflation, says Jim Stoffman, a lawyer with Winnipeg’s Taylor McCaffrey. Say, for example, a 40-year-old parent gifts their child \$100,000. “If they live another 50 years, that’s like giving the kid \$10,000.” Instead, he says, “look at stocks, bonds, RSPs, value of cars and homes, and divide proportionally.” In addition to specifying who gets what, Stoffman asks clients to develop plans for four scenarios: one for short-term, medium-term, and long-term marriage, and one for death. The short-term scenario, which pertains to a marriage of five years or less, is the easiest one to work out: just keep the status quo. As the anniversaries pile up, Stoffman says, relationships inevitably get more complicated. “One can rarely plan beyond three to five years,” he says. “But you can try.”

One good option is a testamentary trust. When a spouse dies, everything in the trust — real estate, bank accounts, portfolios — technically goes to the children, but they are prohibited from accessing it until the step-parent dies. So while the kids own the home, the surviving spouse can reside in it indefinitely and live off accrued interest from the investments.

Another way to avoid common pitfalls is to ensure you and your spouse are clear about who owns what. Don’t jointly register assets. Make sure you know whose name is on the house and the RRSP, for example, and who has full control over the investment accounts. If you can’t answer these questions, you can bet a lot of your estate holdings will be eaten up in legal fees.

Lang didn’t follow the rules, which is why he’s sweating. His wife and kids get along now, but who knows what will happen in the future? “I don’t want my children to feel cheated,” he says. Sounds like it’s time to call the lawyer.

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