

Worried about the break up of your marriage? *It doesn't have to result in a vicious battle.*

Make your situation better. Read the wise advice in this article series authored by experienced family lawyers. Then consider how you'll proceed in the best interests of yourself and your family.

Article 1: Surviving a breakup: what can you do to feel secure if your marriage ends?

This is the first of ten articles designed to help people understand the complex area of Family Law. The articles are not a substitute for legal advice. They are meant to help you focus on the issues that you should consider when faced with family conflict.

Relationships begin with optimism and enthusiasm, not to mention passion, love and a sense of life long commitment. At the beginning of a relationship, who thinks of the relationship ending? Being human, we know that relationships end either when a spouse passes away or if a marriage breaks up – even if we don't want to think about the possibility of this happening.

But it does happen. And if either you or your spouse has children from a previous marriage or if one of you has assets that other family members need to be accountable for, you can arrange for legal tools to help safeguard your individual interests if your marriage ends.

Which legal safeguards provide certainty? The first and most obvious tool you should have is a will. Everyone needs a will, whether married or not. Everyone should get competent advice and have an expert draft the will. For those who survive you, this document will be absolutely necessary to guide following actions.

Next, you and your spouse should consider how you will own property, and who will own it. This is not just a consideration for the two of you, as ownership may be affected by legislation, but also for estate purposes or as protection against creditors. How property is owned can have profound effects on its distribution if your relationship ends.

Providing for certainty when a marriage ends is more complex than doing so before the marriage starts. Have you signed a Marriage Agreement? It is clear that courts will honour the terms of a marriage agreement or pre-nuptial agreement entered into before or during a marriage, but they have discretion to change such an agreement on the grounds of fairness.

Marriage agreements can deal with ownership, management and division of property that either of you accumulated before the marriage, during the marriage and upon a breakup. Such agreements can also deal with spousal support. And such agreements always affect both of you.

Should you have a marriage agreement? It may be useful and effective if you marry later in life or bring a large asset pool to the marriage. Marriage agreements are less effective over time - for example, when people marry young and their circumstances change because of jobs or children. The court applies a 'fairness test' in deciding on whether an agreement should be changed; it assesses fairness based on the date when it reviews the document, not when the document was signed.

Cohabitation agreements can provide for distribution of property and support if a common law relationship ends. However, I must warn you to enter this area with caution and careful legal advice. Cohabitation agreements can contain some unseen dangers that a lawyer will need to talk to you about.

If you are considering a marriage agreement or a cohabitation agreement, talk to an experienced family law lawyer about why you need the agreement and what it should contain.

Ronald J. Smith and Glenda Peacock are family lawyers and mediators based in Kelowna, BC. They wrote this article series to help people learn about preparing for collaborative and constructive solutions to the legal issues involved in marriage breakup.

You can contact Smith Peacock for a consultation by phoning 250.860.7868 or 888.787.6484.

Smith Peacock 1615 Bertram St. Kelowna, BC V1Y 2G5 • www.ronaldjsmith.com



SMITH PEACOCK

Lawyers, Chartered Mediators, Chartered Arbitrators