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Education for Women
Women's Right to Know

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Domestic Contracts

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, get legal advice as soon as possible to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem" on our website at www.onefamilylaw.ca.

Domestic contracts are legal agreements about intimate relationships. Cohabitation agreements, marriage contracts and separation agreements are different kinds of domestic contracts. You can use domestic contracts to set out certain terms for your relationship. You can also use a domestic contract to agree on you and your partner's rights and responsibilities in case your relationship ends.

Domestic contracts are not legal unless they are in writing. Both you and your partner must sign the contract in front of a witness. To change anything in the contract, or to end the contract, you must follow the same rules: it must be in writing and both of you must sign in front of a witness.

Domestic contracts can take away important rights. They can take away your property rights and your right to support. Talk to a lawyer before you sign any kind of domestic contract.

Types of domestic contracts

Cohabitation Agreement

You and your partner can make a **cohabitation agreement** before or after you move in together.

A cohabitation agreement can say:

- How you want to organize some things in your relationship (for example, you can agree that you will keep your finances separate).
- What you will do if your relationship ends (for example, how to divide property and how much support one of you will pay to the other). This is important because family law about property does not apply to common-law couples. When a common-law couple separates, the home that they lived in belongs to the person whose name is on the title.

A cohabitation agreement cannot say anything about custody and access for your children. Custody, access and child support can only be decided after you and your partner separate.

If you and your partner get married after you have been living together, your cohabitation agreement becomes your marriage contract.

Marriage Contract

A **marriage contract** is like a cohabitation agreement, but it is for couples who are married. If the contract is for people who are planning to marry it could be called a pre-nuptial agreement.

Marriage contracts can talk about the same kinds of issues as cohabitation agreements. A marriage contract cannot say anything about custody, access or child support. These issues can only be decided after you separate.

Family property and marriage contracts

If you are married to your partner, you have the right to share in the value of your family property, including the home where you live. This home is called the **matrimonial home**.

Be very careful. You could give up something that will affect your future.

The law says that you and your partner have an equal right to live in your family home. The law also says that one of you cannot sell or mortgage your home without getting permission from the other. Marriage contracts cannot change these rights.

Marriage contracts can be used to get around one very important right dealing with your family home. The law says that both you and your partner have the right to half of the value of your family home. The value of your home is shared along with the other assets and debts when you separate. This is true no matter who

owns the home and who paid for it. It is also true even if one of you owned the home before you got married. Your partner may ask you to sign a marriage contract that says that the value of the home or other property will not be shared, or that your share will be an amount that is less than it should be. The law allows marriage contracts to say this.

Separation Agreement

A **separation agreement** is another kind of domestic contract. You can use a separation agreement to decide how to deal with issues when you and your partner separate. You can have a separation agreement if you were married or if you lived in a common law relationship. A separation agreement can talk about custody and access for children, financial support, and how property will be divided.

You and your partner may choose to use a separation agreement to resolve these issues because:

- negotiating an agreement can be quicker and less stressful than going to court;
- you can control what is in your agreement;
- you and your partner may be more likely to follow the agreement because you chose what to put into it.

How are domestic contracts enforced?

You can file your domestic contract with the court. If you do, the support clause will be enforced as if it were a court order. You should file your contract, in case there is a problem in the future. Filing your domestic contract with the court does not mean that the court will review the agreement. The court will only review the agreement if one of you challenges the contract. You can also ask the court to help you enforce other terms in the agreement.

Most of the time, courts will enforce what is in a domestic contract. Get legal advice before you sign a domestic contract. Make sure you understand what is in the agreement. Make sure you understand how your rights in the agreement are different from your rights under the law. A lawyer can also help you find out if you have all of the information about your partner's finances you need to decide whether the agreement is right for you.

Will the courts change an unfair contract?

If you want to challenge something in your domestic contract, you must apply to the court. You should know that courts do not like to interfere with these agreements. The courts will not change a contract just because it gives you less than you would get

under family law. You are more likely to succeed in challenging the agreement if you can show that:

- your partner was not honest about his financial situation;
- you were pressured into signing the contract;
- the agreement is extremely unfair.

Courts don't usually change what contracts say about dividing property. They are a little more likely to change what a contract says about spousal support. If your situation is worse than it was when the contract was signed, the court may be more likely to change the agreement.

When a domestic contract is challenged, the court may decide that one part of the contract should be taken out. If that section is a key part of the contract, the court may decide that the whole agreement is not legal. In that case, you and your partner can make a new agreement or, if you cannot agree, you can ask the court to help you deal with these issues.

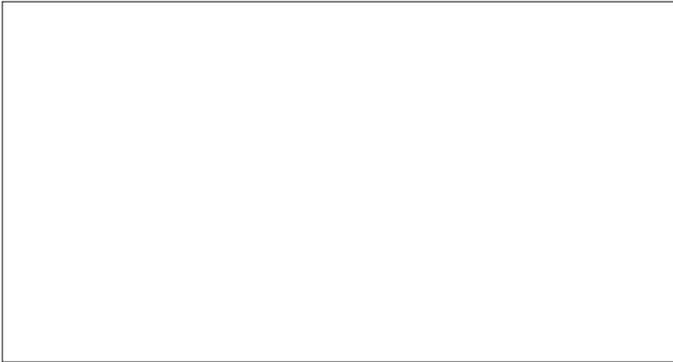
If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at www.onefamilylaw.ca or www.undroitdefamille.ca.

Family Law topics available in English*

1. Alternative Dispute Resolution and Family Law (ENG 001)
2. Child Protection and Family Law (ENG 002)
3. Child Support (ENG 003)
4. Criminal and Family Law (ENG 004)
5. Child Custody and Access (ENG 005)
- 6. Domestic Contracts (ENG 006)**
7. Family Law Arbitration (ENG 007)
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ENG 008)
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
11. Marriage and Divorce (ENG 011)
12. Spousal Support (ENG 012)

** This booklet is available in multiple formats and languages. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.*



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