

The Domestic Contract – Which Is Which and When to Use It

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Domestic Contracts

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INTRODUCTION

Relationships are complicated and so are the plethora of parties that enter into them. Time was long ago that there was maybe three types of people in the world – the married couple, the single people (likely looking to get married if you believe all the fairy tales), and the widows and widowers. Back in Cinderella’s day – to stay with the fairy-tale theme, nobody lived in a common-law relationship, and there certainly weren’t any same-sex marriages, and since there was only one religion in the entire (flat) world, you had to start a new religion to get divorced.

But times have changed and we are now faced with a myriad of unique relationship dynamics governed by kings and queens, rabbis and priests, parliaments and presidents. And more and more people want to establish the groundwork for that relationship and the possibility of its breakdown or termination. So this plethora of parties comes to our doorstep wanting advice about a domestic contract, and that’s where the fun starts.

The purpose of this paper is to discuss the three basic types of domestic contract – a cohabitation agreement, prenuptial agreement and marriage contract, and help you identify when to use a particular contract. You will learn some steps that are very important in correctly identifying which contract is best in your fact scenario, and also about some unusual facts and ideas you may not have thought about that can impact which contract is most appropriate.

IDENTIFY YOUR PARTIES

The process of determining which contract and when should always begin with the proper identification of your parties. For instance, lawyers are often asked when two people are considered to be living “common-law”. From my own experience, I have been told by my clients that the answer is everything from three months, to one year to three years (and yes, you read correctly, I have been “told” by my clients – normally because the client has found the answer on the internet, a friend told him, or she saw it on TV). The lawyer then has to have a long discussion with the client about the factors which are considered in determining whether or not two parties are considered to be cohabiting for the purposes of various forms of relief in family law.

While this may seem to be only a humorous segue, it is an important factor to consider when determining which domestic contract to use when consulted by a client, or in some cases even if the client needs a domestic contract.