

Build Your Future: Using the Collaborative Process to Negotiate Cohabitation Agreements / Marriage Contracts

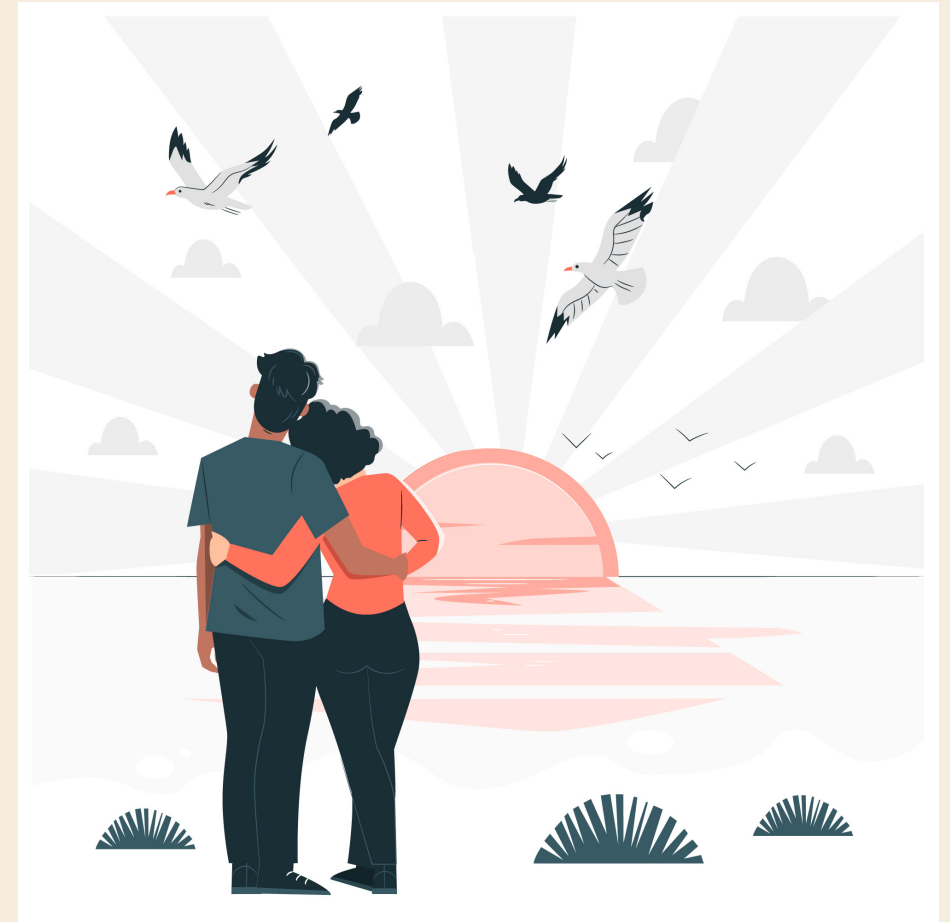


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Poll:

- Who has had the opportunity to use the Collaborative process for marriage contracts?
- Who has used a full team for marriage contract negotiations?

3 Key Features of Successful Marriage Contracts and Cohabitation Agreements:



Agreement reflects the values and goals of both spouses and acknowledges the relationship they are building together



Provides a full and clear picture of their financial situation



Both parties understand and agree with the legal consequences of the agreement and are fully informed about the alternatives

Challenges of Negotiating Marriage Contracts from a Legal Perspective:

- Can't predict the future
- Third parties who are more invested in the negotiation than the spouses who may be reluctant participants
- Getting disclosure from third parties (extended family or business partners)
- Manage power imbalance (disparate wealth), avoid duress
- Lawyer may alienate their own client
- May be a time crunch because of a pending wedding date
- May turn into a Separation Agreement negotiation

Emotional/Relationship Challenges of Negotiating Marriage Contracts:

- Negotiating a MC can be like opening Pandora's box. The process may uncover intense feelings about the couple's relationship, commitment, future goals, communication or problem-solving styles
- There are often third parties working in the background of the negotiation, influencing, demanding or pressing for a particular outcome (e.g. parents of the couple, adult children from previous relationships, business partners). The couple must manage their own negotiation while taking third party relationships into account
- The process may raise doubts about the relationship which must be explored and resolved before a final contract is in place
- The relationship may end during the process, triggering unexpected changes, disappointments and grief

Financial Challenges of Negotiating a Marriage Contract:

- Differing attitudes towards money – savers vs. spenders; pay debt or invest, budget or spend
- Cost benefit analysis of valuing assets (e.g. valuations of real estate, trust interests, business interests)
- Accuracy of financial information about wealth, value of assets, inheritances, trust structures,
- How to plan for the future, examples of consequences of options under consideration
- Financial experience and education, ensuring knowledge about own and other's finances
- Employment/careers and earning potential especially if younger couple
- Estate planning, (children from previous marriages, insurance and trust needs)
- Ways to provide financial security given terms of the contract

Collaborative Process Design: Dealing with the Challenges



- Composition of Team
- Tools to identify, understand and work through the challenges that come up in Marriage Contract negotiations
 - Goals and Concerns Questionnaire
 - Exploring underlying values
 - Mining for Interests
 - Speaking with interested 3rd parties @ expectations
 - Structure of meetings
 - How to share sensitive financial information
- Identifying and accommodating different decision-making styles
- Team to discuss and decide which tools can be used to ease/smooth negotiation process
- Professional communications,

Core Values: Make a list of your 4 core values.

Integrity	Giving to Others
Time to Reflect, to be quiet	Family Vacations
Self Improvement, Lifelong learning	Loyalty/Faithfulness
Independence	Personal Image
Caring for the Environment	Spend to Enjoy life now
Social Standing	Recreational Pursuits (sports, hobbies)
Strong/Healthy Relationships	Healthy Lifestyle, Exercise
Religious Beliefs / Faith	Professional/Career Achievement
Culture (arts, music, travel)	Saving for the future, be frugal now
Fairness/Justice	Community Involvement
Academic Achievement	Financial Responsibility
Financial Independence	Self Improvement, Lifelong learning,
Friendship	Spiritual values

*The list of values for this exercise has taken from workbook called **Designing our Future Together** created by Janita Gallant and used with her permission. You can find out more about this workbook and Jacinta's other offerings at <https://jacintagallant.ca/InnovationForLawyers>

Decision-making (Process) Values:

Dialogue (discuss and talk it over before deciding)	Hierarchy (I am the person in charge)
Collaboration (work together to meet all needs)	Delegation (leave it to others)
Exclusivity (only some participate in the decision)	Inclusivity (consult with all affected)
Equality (each person has an equal say)	Reflective Thinking (take time, explore possibilities)

Family case scenario:

- We are going to introduce to you Erica and Andrea.
- Imagine this is your new file.
- Think about the process you would design to support this hopeful couple.
- Consider what may challenge the negotiation process and contemplate how the CP process you design can meet those challenges.

- Eric and Andrea are in their early 30's and have lived together for 3 years
- Eric is a hard-working entrepreneur & real estate developer. He pays himself an income of \$200,000 with frequent additional draws.
- Andrea is a creative soul who values dialogue and close relationships. She is an artist, selling a few sculptures a year earning \$15,000/yr
- Eric was raised by a single mother who struggled financially. Eric believes in "handshake deals" and is uncomfortable with lawyers or legal documents. He cherishes his relationship with his mother and with Andrea's parents. He appreciates the stability that her family has and wants to create the same financial security in his family with Andrea.
- Andrea comes from a wealthy family. She is a beneficiary of a trust and owns a cottage with her two sisters. She values her independence and her ability to live life on her own terms including exploring new places and cultures.
- They recently purchased a renovated house together worth \$2 million with a \$1.2 million mortgage; part of the mortgage was invested in Eric's business; Eric paid for the home renovations, and Andrea contributed \$500,000 towards the purchase using a gift from her parents. They are planning on starting a family; Andrea expects to be a stay-at-home mother.
- Andrea's parents are concerned that her future wealth be protected and preserved.
- Eric and Andrea are getting married in 5 months.

Discussion

- How would you design a collaborative process to help this family?
- How would you ensure the process you build addresses the key features of a successful contract?

Summary of Collaborative Marriage Contract Negotiations

Retain Collaborative Lawyers

- Interim or Standstill Agreement
- Retainer Agreements & Joint Process Agreement
- Goals and Concerns/Values/Vision of future

Team as Appropriate

- Value Assets and Debts
- Financial Disclosure
- Relationship/Emotional Work

Negotiation Meeting(s)

- Neutrals to Facilitate
- Explain the law, types of marriage contracts,
- Review Financial Information
- Generate Options

Settlement Drafting

- Joint drafting with questions and comments
- Review with Clients/ Time to reflect
- Tweak, Finalize and Sign

Questions and Comments

Exit Poll:

How many would use the CP process on your next Marriage Contract/Cohabitation Agreement?

Would you use a full team collaborative approach?

Thank you and enjoy the conference!

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