



What to do to  
stay married together

## Description

# The legal I do's and don'ts of marriage and co-habiting couples

By **Linda Hammerschmid**

Anyone who has ever listened to me on Dr. Laurie Betito's CJAD program, *Passion*, knows that I always recommend getting either a marriage contract, or if simply planning on living together, a cohabitation contract.

Why? Because sadly 50% of you WILL split up. And usually, unless you plan ahead, the nightmare of splitting up can continue for years, even sometimes for periods that outlast the time you were together.

And make no mistake everyday nastiness is the tip of the iceberg and has nothing on splitting up, previously deliriously happy couples.

The old adage of the 5P Principle applies as well to marriage and cohabiting as it does to any other realm of life. (For those who aren't familiar with this acronym, the 5Ps = Prevention Prevents P... Poor Planning.)

First and foremost, you must be able to talk to each other. Really talk and about E-V-E-R-Y-T-H-I-N-G. Not just what movie to see, where to shop, what to make for dinner, but all the sensitive issues, all the uncomfortable ones, and all the time.

... if marriage is your future, discuss what type of matrimonial regime you wish to be governed by... Find out what they mean – BEFOREHAND! And if you can't discuss that, you shouldn't be getting married.

It is not sufficient to talk once about where to bank and what type of accounts to open. You must ensure that all aspects of your finances are and will continue to be discussed. Where to live. How to raise and discipline children. Types of schools. How to discuss in-laws. The list is endless.

Second, if marriage is your future, discuss what type of matrimonial regime you wish to be governed by. Separation as to Property requires a marriage contract. No marriage contract means you will be under the Partnership of Acquests regime. Find out what they mean – BEFOREHAND! And if you can't discuss that, you shouldn't be getting married. You can also have a marriage contract that provides for the Partnership Regime



and all contracts should include a comprehensive inventory of each person's assets owned and debts incurred at the date of the marriage. The more you detail now what is what, the less angst you will have twenty years from now trying to remember.

Cohabiting couples can have their own version of these regimes set down in their cohabitation contract. And because they are not getting married, they can have terms and conditions written in that those who are getting married can't have due to the Family Patrimony rules which are of public order.

By the way, and as I love repeating – there is no such thing (currently) as Common Law in this province. You can live with someone for three years or thirty years but if you have no contract, you are not entitled to claim alimentary support should you break-up (in a future article, I will discuss how having children impacts this issue). If you have jointly owned assets that is one thing, but if only one person owns that house you are living in, and it's not you, well too bad.

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And be you married or not, unless you have proof, and the onus of proof is on the person claiming deductions/compensation, that you contributed to the enrichment of your partner's asset(s) – usual example being using your money to pay for renovations on property solely owned by the other, your claim will be difficult to obtain. And certain deductions for such contributions, which exist for married couples and/or those in Partnership of Acquests, do not apply to the unmarried couples unless you provide for this in a contract. Such occurrences can be put into a cohabitation contract now for such future events. So, all the more reason to get one!

And for either married or non-married couples, if you buy a house together, and one puts in more than the other, or if one uses inherited money, have the Notary put in a clause that says so and what happens to that money if the house is sold, or if you split. Does the over-contributor get their money back first and split the rest (if your property was put in joint names, does that matter, or if married and it falls under Patrimony rules)?

So much to know before deciding on a life mate. So be smart or stay single!

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