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### What is a prenuptial agreement?

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The *Family Law Act* permits parties to enter into “prenuptial agreements” or marriage contracts as they are called in Canada, that protect their assets and finances should their marriage end.

A marriage contract can deal with all issues relating to property division and financial support in the event of a marital breakdown, or it can be more narrowly focused.

For example, a marriage contract may be limited to identifying certain assets which are to be exempted from division following the breakdown. A marriage contract can specify different results depending on a particular triggering event, such as whether the marriage ends due to separation or the death of a spouse and it may envision a number of scenarios or set out a rising scale of benefit or entitlement depending on the length of the marriage.

A marriage contract can and should be adapted to reflect the goals and intentions of the parties entering into the contract. A “one size fits all” approach is not appropriate.

Negotiation of a marriage contract prior to or during marriage can be an anxious, emotional, and relationship-threatening proposal and process. Due to the significant financial obligations and responsibilities associated



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with marriage, the negotiation of a marriage contract is a serious undertaking requiring significant care, detail, and consideration. Overall fairness with regard to financial security and certainty must be the guiding principle.

For a marriage contract to be valid and enforceable, it must be in writing, dated and signed and witnessed by third parties. The parties must each provide the other with full financial disclosure with respect to their assets and liabilities, and most importantly, the contract must be entered into intentionally and voluntarily. Provided these requirements have been met, a Court will be reluctant to second-guess such arrangements made between couples, particularly where each party has obtained independent legal advice.

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Jaskot Family Law offers experienced and knowledgeable counsel with a well-established reputation in handling complex custody, support and property matters. Our legal team provides litigation, negotiation and collaborative law services and is regularly involved in mediation and arbitration matters. Jaskot Family Law regularly undertakes family law matters within the Hamilton, Milton, Toronto and Niagara Court jurisdictions.



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