



Domestic Contracts for Business Owners in Newfoundland and Labrador

A domestic contract offers NL business owners the opportunity to protect business assets against a claim from a married or common-law spouse following separation and avoid costly litigation.

Domestic Contracts Defined. A domestic contract is a written agreement setting out a (married or common-law) couple's legal obligations to each other in the event of a separation. Such obligations could include property division (personal and business), spousal support, and in some cases, custody and child support. Newfoundland and Labrador law authorizes three types of domestic contracts:

- A **cohabitation agreement** is a contract entered into by a couple before marriage, while cohabiting, or in contemplation of marriage. It can address property division (personal and business) and spousal support, and can be converted to a marriage contract if a couple marries.
- A **marriage contract** (a.k.a. “prenup”) is a contract entered into by a couple who are married or intend to marry, and can address the same matters as cohabitation agreements.

- A **separation agreement** is a contract entered into by a married or common-law couple after separation. It can address property division, spousal support, custody, and child support. If the couple is married, the separation agreement can be included as part of the final divorce order, making the divorce process much easier.

Property Division. Without a domestic contract dealing with business assets (among other things), the general legal principles of property division can expose a NL business owner to claims by their married or common-law spouse.

- **Married Couples.** NL law presumes an equal division of matrimonial property between married spouses on separation. “Matrimonial property” is property acquired by married spouses during the marriage, with some exceptions, one being business assets. If a married spouse believes equal division is unfair or unreasonable, they must demonstrate why. This is generally an uphill battle. “Business assets” existing or acquired during a marriage are “property primarily used or held for or in connection with a commercial, business, investment or other income or profit producing purpose.” This includes the value of the business itself, real property, earnings (including retained earnings), shares, and so on. Business assets are not “matrimonial property” under NL law and there's no presumption of equal division on separation. However, a married spouse can seek compensation to the extent of their contribution to, or an actual ownership interest or share in, the business asset if they can prove they “contributed work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of a business asset of the other spouse.”

- **Common-Law Couples.** NL law does not presume an equal division of property between common-law spouses on separation. The starting point is that on separation, each spouse takes only those assets

they acquired during or before the relationship. Like married spouses, common-law spouses can also claim on separation a share in assets, including business assets, the other spouse owns or holds if they prove a contribution to the acquisition, maintenance, or upkeep of the asset from which the other spouse is benefiting. However, there's no guarantee that interest will be 50%: it could be more – or less.

Business Owner Benefits. A domestic contract allows a business owner in Newfoundland and Labrador to avoid many difficult and complex questions that must be answered on separation, a process that virtually always attracts very high legal costs. For example:

- How should a court consider business income in determining the entitlement to and amount of spousal support?
- Should married spouses who jointly hold or own a business asset be entitled to its equal division if one spouse put more work or time into it?
- Is an asset claimed to be a business asset truly a business asset? Is it being used for an income-producing purpose?
- Is a married or common-law spouse entitled to an interest in a business asset the other spouse holds because of a monetary or other contribution? If so, what's the value of the interest?



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This article originally appeared in *The Advisor*, Summer 2019. To view the full publication visit: www.thenloweadvisor.org