

ct — an overview

enforce the will. Some insurance companies are reluctant to release funds in less than six months.

3. Gifts (Outright)

It is common to give some assets to children. Such a gift, after marriage, if it can be traced, is excluded by the law. Should you give just to your child or your child's spouse too? OR, on some assets should you sell and hold a note to be forgiven in your will?

4. Taxation

If one party must sell assets to provide money to another, these assets could trigger income tax. Any settlement should provide for this problem.

5. Valuation and Accounting

The old legislation used to rely on the division between family assets and other assets. Now a valuation of assets upon the creation and dissolution of marriage may be required. In addition,

good records of liabilities and the use of gifts and inheritance may be required. At the very least, each spouse, upon marriage, should prepare a list of assets and liabilities. From this start, a record of gifts and inheritances received and use of the same should be kept.

With fees for lawyers, appraisers and accountants to consider, it will be cheaper to stay married.

6. Goals

Marriage breakdown by separation and divorce will usually end up with the spouses being forced to be concerned with their own needs, each wanting to maximize his/her settlement and minimize his/her obligations. This is most disruptive of long term goals regarding homes, cottages, retirement plans and for the continuation of a family business like a farm. Many farms would have debt servicing difficulties if a new mortgage had to be acquired for a 50 per cent settlement.

SUPPORT OBLIGATIONS

Part III of the Family Law Act says that "a spouse" means one of a man or a woman married to each other, but also includes either of the man or a woman who are not married to each other, and have cohabited either continuously for a period of not less than three years or in a relationship of some permanence if they are the natural or adoptive parents of a child. While the law does not define a common law marriage, there now is a form of statutory marriage according to the above definition. This is the major change brought about with respect to support obligations.

This definition only applies for support and has no implication on property settlement.

This article only attempts to review the area of family law and its impact on the family. In all cases, a lawyer should be contacted for details applying to any one family.

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