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10 ways to divorce-proof your assets and protect your wealth

No one gets married with the expectation of one day filing for divorce, but it happens to somewhere between [38%](#) and [48%](#) of Canadian marriages. Whether you're the primary breadwinner in a double-income household or you rely on your spouse's income, [studies](#) show that it is a woman's income that is generally reduced by a wider margin than her husband's – in a traditional marriage – when their marriage dissolves¹.

1. Consider a prenup (or a postnup):

While divorce settlements typically divide assets acquired during a marriage (with some exceptions), a signed contract can help you keep what's yours. A prenup – or postnup, which is created after two people are already married – can stipulate, for instance, how you plan to share earnings, bonuses and share options, or who will keep possession of the ski chalet in Whistler. These agreements are especially important if you're an entrepreneur – you don't want someone else to wind up with half of the business you've worked so hard to build. Couching the prenup talk in terms of protecting the company and its employees may make any conversations less awkward. As for postnups, they can be signed even after

years of marriage, but if you're planning to raise the idea, be sure to choose the right moment. Find a time when you're both relaxed and aligned rather than in the middle of a heated argument. Make sure postnups are signed after having had independent legal advice, otherwise the documents you've worked hard to draft will not be worth the paper they're written on.

2. Document gifts and inheritances.

In the absence of a prenup or postnup, all assets owned by either spouse in a marriage, including the marital home and investments, are generally considered family property subject to equal division. But while laws vary from province to province, inheritances and gifts are typically considered exempt. It's important to keep a paper trail, however, that demonstrates how and when these assets were acquired. Make sure to keep legal statements, valuations, Notices of Assessment and other relevant documents that can establish you as the sole recipient. Not only must you document these gifts and inheritances, but you must also keep them separate and distinct from the 'family assets.' This means that while paying down your mortgage with an inheritance may seem like a responsible idea, it would also mean you've lost any protections the family law rules would otherwise give you, and the value of the gift or inheritance would be subject to a family law claim.

3. Get your timing right if you do decide to leave.

Are you expecting a bonus? Or maybe you have languishing investments that are poised for a big rebound? Each married partner has the right to a share in the value of the assets acquired during a marriage, but any gains that happen after separation typically go to the spouse who owns the asset. So, if you're expecting a windfall, you may want to time your separation date to avoid sharing upcoming gains.

4. Don't knee-jerk liquidate.

During a breakup, affluent couples are sometimes tempted to start selling their assets immediately to settle up, but this can trigger unwelcome capital gains. There may be better options, including transferring assets to your spouse (or vice versa) via what's known as a spousal rollover, that can minimize your tax liability when dividing assets. Once you've separated – and before you're legally divorced – it's best to speak to a financial advisor who can explain the tax implications of liquidating or changing the ownership of assets.

5. Review your estate plan.

Revisit your Will, power of attorney documents, beneficiary designations and shareholder agreements to ensure your assets are distributed according to your wishes. It's important to revisit these documents regularly. A separation or divorce doesn't typically revoke the terms of existing Wills and other legal documents, so if you don't want your rare book collection to go to your ex, make sure to update them.

6. Avoid keeping everything in joint accounts.

Research suggests that shared accounts engender trust and contribute to greater marital happiness, so you may want to have one account you both contribute to each month to cover agreed-upon expenses. But consider keeping everything else in separate accounts. Commingled assets can be difficult to untangle – and easily accessed by an embittered ex if the relationship ends less than amicably. In extreme cases, an embittered ex could transfer all the funds from the joint accounts to their sole accounts and leave the other spouse with zero funds to immediately access, something you need to have for a legal retainer for separation to proceed. And since divorce could lead to your suddenly needing to find a new place to live, make sure that at least one of your accounts is liquid enough to cover a down payment on a new place.

7. But don't hide assets.

Transparency is important in a healthy relationship. A lack of it can exacerbate problems in the event of a breakup. A spouse who finds out about an investment portfolio that had never been mentioned or a work of art that wasn't disclosed may quickly turn nasty and complicate settlement proceedings.

8. Make a comprehensive list of all your assets and liabilities.

You don't want to scramble to remember what's yours when things become emotionally fraught. Your lawyer or mediator will need to see your assets to help determine a settlement. Key items to include:

- your home and any other real estate you own
- your investment portfolio
- businesses you own
- pensions and registered retirement accounts
- bank accounts
- cars and recreational vehicles
- jewelry, art and safety deposit box contents
- mortgages and lines of credit

9. If things do go south, consider a mediator.

No one wants their financial holdings publicly disclosed – especially when there are large amounts of money at stake. Working with a mediator means that settlements will remain private, something to keep in mind if you want to protect your privacy in your social network.

10. Don't pay for things you don't own.

For example, your in-laws want you (and your spouse) to assist them with a cottage reno, when the cottage will eventually go to their son. Or, your in-laws allow you (and your spouse) to construct a cabin on their cottage land to add to the family compound. This may sound like a great idea when it permits you to access a vacation property you may not otherwise be able to afford. Unfortunately, that won't likely be a 'family asset' when it comes time to separate unless it's legally well-documented with you and your in-laws. You may be stuck having to take legal action against your in-laws in the form of a constructive trust claim at the same time as your divorce. This can be an expensive endeavour and emotionally exhausting and may cause you to decide it's easier to walk away from these invested funds than pursue a claim.

Having a plan in place – in the form of a prenup or postnup – will go a long way in providing both partners with peace of mind in the event of a relationship breakup.

¹While this article focusses on legal marriages, all of the above points would be valuable courses of action for someone in a common-law relationship. It's important to note that the law does differ in many ways, and you would want legal advice on your individual situation.

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