

FAMILY LAW DEPARTMENT

Prenuptial And Cohabitation Agreements

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PART 1

Prenuptial and Cohabitation Agreements

Whilst it may not be the most idealistic or romantic start to a relationship Prenuptial and Cohabitation Agreements are an essential part of preparing for a modern relationship. People increasingly understand that these agreements are designed to give them protection in the event that things do not work out as intended. These agreements can set out in advance arrangements for your children and govern the division of finances and property in the event your relationship breaks down. These agreements will provide security and peace of mind for both of you, can protect your assets, support your estate plan and reduce conflict and save you the cost of expensive financial proceedings.

PART 2

Prenuptial Agreements

A Prenuptial Agreement is a contract entered into before marriage which outlines how a couple wish to divide their money and property should the relationship end.

Prenups are not strictly binding on the Court in the event of later divorce, but it is likely that a Prenup will be respected by the Court unless the effect of the Agreement would be deemed unfair. Judges now view these agreements as a useful indicator of the couples intentions at the time they entered into their relationship.

To do the best job of ensuring that the Court uphold the terms of the Agreement it is important to ensure the following:-

1. That there is full disclosure of your respective financial circumstances
2. That both of you take independent legal advice on the agreement and its effects.
3. That the Agreement is entered into in good time prior to the marriage.
4. That there is provision for the Agreement to be reviewed in the event of a future change in circumstances – ie birth of children.
5. That the terms of the Agreement would not cause significant injustice to the other party compared with the award a Court would make following separation.

A Prenup is a bespoke document drawn up for the two of you for your particular circumstances, so it can cover almost anything you want it to. There are certain things a couple usually think about when deciding how they would want to work things out if the marriage does not work;

- What would happen to property either of you brought into the marriage?
- What would happen to the family home?
- What would happen to any property given to you or inherited during the marriage or any income or assets derived from Trusts?
- What would happen to money held in joint accounts and any property purchased jointly?
- What would happen to any saved money earned during the marriage?
- What would happen to your pensions?

- How would you deal with any debts?
- Would either of you pay or receive any maintenance and, if so, for how long?
- What kind of events might require the agreement to be reviewed?
- What kind of arrangements would you like to make for any children you have or are likely to have, both in financial and in practical terms?

PART 3

1. Cohabitation Agreements

A Cohabitation Agreement is a written document, often signed as a deed in front of witnesses. It will generally deal with:-

- Who owns (and owes) what at the time of the agreement, and in what proportions
- What financial arrangements have you decided to make while you are living together, and
- How property, assets and income should be divided if you split up.

Where the Agreement is properly drawn up, the terms are reasonable, and each of you has had separate independent legal advice on its effect, a Court is more likely to uphold the Agreement in the event of a dispute.

2. Why Should I Make A Cohabitation Agreement?

Unlike on divorce there is no particular set of rules that automatically applies if you split up with someone that you have been living with. There is no such thing as “Common Law Marriage”. Living with someone for a certain period of time does not mean that you are automatically entitled to some financial support or to share their property after you split up. Without an agreement a party can be left in a very exposed position and it is not unusual for disputes about property without an agreement becoming protracted and expensive to resolve. A good Cohabitation Agreement can mean that areas of potential dispute on separation are reduced or eliminated.