



Family matters

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How to Live Happily Ever After

Binding Financial Agreements: What are they and should you have one?

We are surrounded by media reports of high profile celebrities and their acrimonious separations. Would Greg Norman and Laura Andrassy have had a smoother transition to divorce if they had agreed on who got what when they married or would Heather Mills and Paul McCartney have spared us the finer details of their married life if they'd entered into a Binding Financial agreement? What would have happened in these cases if they had sought legal advice and prepared agreements to protect themselves and their assets?

The *Family Law Act 1975* provides various options. A couple contemplating marriage can have a Pre-Nuptial Agreement drafted prior to marriage. If you are already married though and have not protected yourself, there are options to have an agreement drafted after you marry, after you separate or after you divorce.

The purpose of these agreements is to allow parties to determine what should happen to their assets and financial resources rather than have someone else do that, for example a court. A properly drafted agreement means that a court exercising family law jurisdiction will not apply, however, if it is necessary to enforce the agreement the court can intervene.

Pre-Nuptial Agreements are particularly useful for the following:-

1. people entering second marriages who have been 'burned' before. It allows them to protect their assets and ensure children from a previous relationship inherit;
2. older, never married people who have accumulated assets;
3. people who wish to preserve family farms or businesses that have been in a family for generations;
4. to protect assets which may be inherited;
5. to recognise gifts/settlements made by one party and to ensure they are taken into account later on;
6. where one party finances another party's education and
7. where one party has substantial debts at the commencement of the marriage.

A lot of people fear pre-nuptial agreements and say they are not romantic. It is unusual for first time, idealistic couples to request an agreement. Advocates of agreements say they increase communication and open up issues for discussion prior to entering marriage. An example of where a young person may wish to have an agreement is if his/her parents want to give the child a house but that is on the condition that the house is always the property of the child. A pre-nuptial can deal with just one asset.

TIPS

Ideally the agreement should state the intended date of marriage;

- Ask for one to be prepared well in advance of your wedding;
- If circumstances change significantly, review the agreement and
- Seek advice from a family law solicitor.

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