



PLAIN ENGLISH GUIDE

Prenuptial Agreements

A prenuptial agreement is an agreement made under the Family Law Act, and it is generally made before marriage, although agreements can be made during marriage and after divorce. It is a binding financial agreement between the parties.

To make a prenuptial agreement binding, there are some requirements that must be met, and they include:

- It must be in writing
- It must be signed by both parties
- Each party must seek independent legal advice regarding the document
- Each party must provide evidence that they have sought independent legal advice (i.e. a certificate signed by the lawyer that they saw)

There are some situations where a prenuptial agreement is not binding. These can be rather complex, and Commins Hendriks suggest that if you have concerns regarding this, you should come in and speak to one of our friendly team who can explain this area to you thoroughly.

Advantages and Disadvantages:

Advantages:

- Knowledge that your well-drafted prenuptial agreement will protect both your interests in the even of a marriage breakdown. This can be very reassuring if you have already been through the breakdown of a marriage before.

Disadvantages:

- Because the law in this area is fairly new, there is some uncertainty about when these agreements can and will be set aside, and how the courts will interpret the law.
- If all contingencies have not been thought of prior to the agreement, the actual use of the agreement could be unfair to one or both of the parties.

If you wish to enter into a prenuptial agreement, the following are some of the things that you will need to discuss beforehand. It is very important that you discuss exactly what you would like your prenuptial agreement to cover as a couple. Prenuptial agreements can make provisions for maintenance of either of the parties during or after the marriage, and they can state how the parties' property and financial resources are to be dealt with in the event of a breakdown of the marriage. You will need to try and think of everything that might happen during your relationship.

Please note that it is vital that you speak to a lawyer about this agreement well before your marriage.

- Do you both intend to work during the marriage?
- Do you plan to have, or do you already have children?
- Do you have children from previous relationships?
- What will happen if either of you are injured and can no longer work?
- What will happen if a child has a disability or illness that requires significant care?
- What provisions would you like to make for your retirement?
- Do you intend to have a joint bank account, or separate ones?
- What is your plan to meet your living expenses?
- Do you expect to receive any inheritance? If so, how much to you expect to receive, do you wish to make any specific provision in relation to that inheritance and what do you plan on doing with it?



Once you have discussed these things, you should make an appointment with your lawyer. You will need to bring with you to that appointment detailed statements of your current income, assets and liabilities, and preferably valuations of any substantial assets you have. Bank account statements, shareholdings, superannuation interests and other investment documents would be helpful to bring along also. The more information you provide, the better and more secure the agreement we will be able to draft for you.

De Facto relationships

There is a binding financial agreement that can be entered into if you are in a de facto relationship. This is under the Property (Relationships) Act. In some respect the information in this guide is appropriate for de facto relationship; however, Commins Hendriks recommends that you obtain specific advice to your situation, so that differences between the two agreements can be discussed.

Commins Hendriks has many solicitors who are more than able to help you with your prenuptial agreement enquiries. Please contact us for further information.