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Prenuptial agreements

A prenuptial agreement (or ‘pre-nup’) can protect cash, real estate, superannuation, investments, businesses, inheritances and pension entitlements, as well as outline any obligation to finalise debts and liabilities of the relationship.

The agreement covers what will happen in the event that the relationship breaks down through divorce or separation, in regard to the couple’s finances and property and how they will be divided.

A prenuptial agreement may be desirable in a range of circumstances, including where:

- it is your second marriage and you have assets from your first marriage that you want to keep to pass onto your children
- it is a de facto relationship and one party is moving into the other party’s property
- one party has much more property than the other when the relationship begins

- you want to avoid any hostility or uncertainty if the relationship does fail, and keep the matter out of court, or
- you want to protect a future inheritance or a family business.

Due to the evolving nature of relationships it is important that all future aspects such as children and future asset purchases are considered. The agreement must also include the parties having received independent legal advice. This must contain a statement from a legal practitioner as to the effect of the agreement on the rights of the party, the advantages and disadvantages to the party making the agreement, whether or not it was necessary for the party to make the agreement, and whether the provisions in the agreement are just and equitable.

For a prenuptial agreement to be legally binding it has to meet strict criteria, as it is a Binding Financial Agreement, otherwise it can be overturned by the Family Court.



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