

Pre-nups – insurance for the future



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The break-up of a relationship is devastating on so many levels. As a family lawyer, I encounter, every day, people whose worlds have fallen apart after they or their partners have decided to end their relationships.

They come to me struggling with a range of issues: how property is to be divided; future care arrangements for children; how to make income that previously serviced one household now stretch to two. And, not least of these issues, is the grief and anger the situation causes.

So I am amazed by how few people enter into pre-nuptial agreements (for marriage) or cohabitation agreements (for de facto relationships, including same-sex) to protect their assets before they enter into relationships and therefore avoid having to go through the trauma of a property settlement with an

estranged partner.

It is relatively simple for parties entering a relationship to conclude agreements at that time, about how property is to be divided in the unfortunate event of a relationship breakdown.

And, in my perception, the trend is definitely changing: couples are increasingly seeing the advantages of being savvy up front, particularly in a time when second and third weddings and de facto relationships are almost as common as first ones.

Promoters of pre-nups see them as insurance for one of the biggest ventures of their lives, and a way to protect both parties against future arguments and legal costs. Detractors argue that such agreements are born out of mistrust or a lack of confidence in the union.

Tindall Gask Bentley, with a family law section of nine lawyers (including accredited family law specialists Jane Miller and me) is well placed to assist clients to create these types of agreements, which are appropriate for all scenarios.

Prime examples of those who should consider entering into pre-nups are:

- » People who, entering into second marriages or relationships, might wish to protect prior assets.
- » Older people who have

Changes to legislation

Pending changes were recently announced in relation to the legislation governing de facto/domestic partnerships.

Those changes have now occurred such that, from July 2010, de facto couples will be treated effectively the same as are married couples, and de facto couples (in all but Western Australia) and their disputes concerning property and children's matters will be heard under the *Family Law Act 1975* (as amended).

There will be a number of changes that will affect the advice given, including on stamp duty issues. The key changes are:

Jurisdiction – instead of de facto couples having to live together in a de facto relationship for three years (or have a child), the relationship need only be for two years, or less if one of the parties has made substantial contributions to property (or there is a child of the relationship).

Limitation period – the period to bring a claim has been extended from one to

two years.

Spousal maintenance – separating de facto couples will be able to apply for spousal maintenance.

Superannuation-splitting – this will allow a superannuation interest to be shared by creating two separate accounts, one for each spouse.

Orders and injunctions against third parties – protection for creditors including trustees in bankruptcy. (Previously, de facto couples were at a distinct disadvantage compared to married persons in bankruptcy proceedings in which third parties were involved.)

In summary, claims by de facto couples for division of property can be brought after a shorter relationship; the period to effect a property settlement has doubled; and opportunities that were previously the domain of married couples (super-splitting and spousal maintenance) are relevant in de facto settlements.

never married but have accumulated assets.

- » People who wish to secure the inheritances of children from first marriages or relationships.

Others include situations in which:

- » Parties might wish to protect property which has been in the family for generations.
- » Third-party ownership is

an issue.

Pre-nups are a handy way for couples to create their own private law about how their assets are to be divided upon separation. And, because a pre-nup, once executed, will be binding, a number of requirements must be strictly complied with.

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My non-police mates now all agree that the RLC has a permanent spot on our cycling calendar (during the TDU cycling festival) and they have all committed to bring along other non-police friends who might themselves enjoy the experience in 2011.

Thanks also to the Police Association for jumping on board with some sponsorship and promoting cycling as a way for its members and families to stay fit and healthy.

Regards

Simon Bell

*Detective Sergeant
Sexual Crime Investigation
Branch*

Ride the Ali Way

Dear Andy

The *Ride The Ali Way* charity bike ride is a fundraising initiative designed to raise money for Alison Oestmann and her family.

Ali is a local Ceduna resident and former SAPOL employee who has been diagnosed with an inoperable brain tumour. Ceduna police are organizing the ride and aim to raise \$25,000, with all proceeds going to the Oestmann family.

The ride, planned to take place between May 6 and 10 this year, will cover 400kms from Port Lincoln to Ceduna. It is open to SAPOL, emergency-services personnel and the public and the itinerary is:

- » May 6 – dinner and fundraiser in Port Lincoln.
- » May 7 – ride Port Lincoln to Mt Hope (85km).
- » May 8 – ride Mt Hope to Elliston (95km).
- » May 9 – ride Elliston to Streaky Bay (125km).
- » May 10 – ride Streaky to Ceduna (112km).

Sponsorship and donations can be made to BankSA Ceduna, BSB 105-100 Account 033798940.

Tom Rieniets

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If the agreement does not comply, it will not be binding.

Some of the hallmarks of a binding agreement are that:

- » The parties will have disclosed their financial circumstances at the time of entering into the agreement.
- » It includes a statement that the parties have each received legal advice before signing the agreement.
- » It has, as an annexure, a certificate signed by each party's lawyer confirming that he or she provided the relevant party with independent legal advice.

Pre-nup agreements are not only available to couples contemplating marriage,

but also people in or entering de facto relationships, including same-sex de facto relationships. These agreements are known as certified domestic partnership agreements and are only binding if they strictly comply with the *Domestic Partners Property Act*.

Advice on drawing up these contracts is highly recommended for any couple looking at a long-term commitment.

Tindall Gask Bentley provides a free legal service to Police Association members. Appointments can be made through the association to receive free preliminary legal advice covering all areas of law, particularly families and wills.