

Sample Pre Nuptial Agreement



Recitals

- ◆ Adam was born on _____ .
- ◆ Eve was born on _____.
- ◆ Adam and Eve have never lived together/have lived together since _____.
- ◆ Adam and Eve intend to marry on _____ and this agreement is conditional on the marriage taking place on that date or thereabouts.
- ◆ Adam and Eve intend their marriage to be permanent but nevertheless wish to define their financial rights and responsibilities during the marriage and if a breakdown of the marriage occurs.



Recitals (cont.)

- ◆ [Here set out further relevant details e.g. that one or both of them have children; that one or both of them are unemployed etc].
- ◆ Adam is the owner of, or otherwise entitled to, the assets and resources set out in the First Schedule.
- ◆ Eve is the owner of, or otherwise entitled to, the assets and resources set out in the Second Schedule.
- ◆ Each party may, in the future, receive gifts or inheritances.



Recitals (cont.)

◆ The parties desire :

- so far as is possible to contract out of the provisions of Part VIII of the *Family Law Act* if the marriage breaks down irretrievably

- to enter into a financial agreement under Section 90B of the *Family Law Amendment Act 2000* providing how:-

- a) in the event of the breakdown of the marriage, their property and financial resources at the date of this agreement, or at a later time, and before the dissolution of the marriage, is to be dealt with; and/or

- b) the maintenance of either of them during their marriage and/or after dissolution of marriage is to be dealt with.



Recitals (cont.)

- ◆ No other agreement is in force under Section 90B, 90C or 90D of the *Family Law Amendment Act 2000*.
- ◆ Before each party signed this agreement, they received separate independent legal advice from a legal practitioner as to the following



Recitals (cont.)

- the effect of the agreement on that party's rights;
- whether or not, at the time the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement;
- whether or not, at that time, it was prudent for the party to make the agreement;
- whether or not, at that time, and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable.



Agreement

- The parties agree as follows :
 - ◆ This agreement will continue to operate notwithstanding the death of a party to it and will be binding on their heirs, executors, administrators and assigns of each party.

Agreement (cont.)

◆ Eve agrees that :

- she has made no financial contribution towards Adam's assets and resources as set out in the First Schedule;
- she has no entitlement to Adam's assets and resources as set out in the First Schedule or any accretion to them or any income from them, except to the extent that she has directly financially contributed to the acquisition or redemption of same;
- she has no entitlement to any gifts or inheritances received, or which may at any time be received, by Adam.

Agreement (cont.)

◆ Adam agrees that :

- he has made no financial contribution towards Eve's assets and resources as set out in the Second Schedule;
- he has no entitlement to Eve's assets and resources as set out in the Second Schedule or any accretion to them or any income from them, except to the extent that he has directly financially contributed to the acquisition or redemption of same;
- he has no entitlement to any gifts or inheritances received, or which may at any time be received, by Eve.

Agreement (cont.)

- ◆ The parties may each contribute financially and non-financially towards the acquisition, conservation and improvement of assets and resources (other than those referred to in paragraphs 2 and 3 hereof) during their marriage to the best of their respective abilities.
- ◆ Assets and resources acquired during the course of the marriage (other than those referred to in paragraphs 2 and 3 hereof) shall be deemed to be owned by the parties in the proportions described in any document evidencing title.

Operative Clauses to be Inserted

Optional Clauses

- Any property which, during the marriage, is received by way of gift by one of the parties from the other, shall be and remain the separate property of the party who so receives it.
- The provisions of clause ??? relate to the maintenance of Eve. The value of the portion of the relevant property provided by Adam which is attributable to maintenance for Eve is ??.

Optional Clauses (cont.)

- The parties agree that, at the time this agreement is made, the circumstances of each of them is such that, taking into account the terms and effect of the agreement, they are able to support themselves without the benefit of an income tested pension, allowance or benefit.

Optional Clauses (cont.)

- For the purpose of this agreement, the marriage will be regarded as having broken down irretrievably if Adam and Eve have been living separately and apart for not less than 3 months and at least one notifies the other in writing that he or she is of the opinion that the marriage has broken down irretrievably.

Optional Clauses (cont.)

- Neither party shall make any claim for any adjustive orders in relation to the property or financial resources of the other.
- Save as provided in this agreement, neither party shall be entitled to claim maintenance from the other.

Certificate of Independent Legal Advice



I, _____ of _____ HEREBY CERTIFY that in relation to an agreement in writing proposed to be entered into between ADAM BROWN and EVE JONES ("the parties") I advised ADAM BROWN ("my client") independently of the other party, and before the time at which my client signed the agreement, as to the following matters :

Certificate of Independent Legal Advice (cont.)



- ◆ The effect of the agreement on the rights of the parties to apply for an order under the provisions of the Family Law Act 1975, the Family Law Amendment Act 2000, and otherwise at law and in equity.
- ◆ Whether or not at that time it was to the advantage, financially or otherwise, for him to enter into the agreement.
- ◆ Whether or not at that time it was prudent for him to enter into the agreement.
- ◆ Whether or not, at that time and in the light of such circumstances as were reasonably foreseeable, the provisions of the agreement were fair and reasonable.