

Collaborative Law and Pre-Nuptial Agreements

This leaflet describes the collaborative law process and how it can assist in obtaining a Pre-Nuptial or Pre-Registration Agreement. Please speak to any of the collaborative lawyers at Russell-Cooke if you would like further information or to arrange an appointment.

What is the goal of collaborative family law?

To assist you and your partner in looking at some issues you may wish to consider before entering into a marriage or civil partnership and help you both to reach an agreement about these issues in a constructive and cooperative way for the benefit of the whole family. To then draft and agree any necessary documents recording the outcome of the agreement.

What is collaborative family law?

Both you and your partner retain separate specially trained lawyers to assist you in discussing these matters, advising on the legal position, raising options for you to consider and helping you resolve issues and reach agreement. Your collaborative family lawyer acts for you, providing legal advice and guidance throughout the process, but working with your partner and his/her lawyer in a collaborative team way to help achieve an agreement.

Issues are discussed and hopefully resolved in '4 way' face to face meetings between you both and your lawyers. Discussions take place in your presence which helps ensure that you and your partner remain in charge of the process. Correspondence between lawyers is discouraged, thereby keeping costs to a minimum.

You and your partner have a duty of full and frank disclosure, and any relevant information is provided voluntarily by agreement. The process often helps improve future communication, and perhaps provides a forum for any concerns either of you may have before entering into your marriage/civil partnership. The discussions focus on the needs and interests of you, your partner and any children there may be.

You and the lawyers can work as part of a group of professionals, including counsellors, mediators and child and financial specialists to draw on the skills of other professionals to assist you and your partner in the process

In issues requiring expert advice or opinions (for example an accountant to give tax planning advice, or the preparation of wills) the collaborative team can jointly instruct one independent consultant.

What are the requirements for a Pre-nuptial or Pre-registration agreement?

1. Financial disclosure provided by both parties
2. Independent legal advice available to both parties
3. No duress or pressure
4. Sufficient opportunity to discuss and agree the terms of the agreement well in advance of any ceremony. The agreement should be concluded no later than one month before the ceremony and preferably well in advance of this.

All of these requirements can be met within the collaborative law process. They still need to be met in traditional solicitor led negotiations but this is often an inappropriate method or forum for discussing such matters at this stage of your relationship

Why Collaborative family law is suited to discussing arrangements for Pre-nuptial or Pre- registration agreements?

It provides a constructive and cooperative forum to discuss and consider any issues.

Unlike the end of a relationship this is the beginning of a new phase of your relationship together. It is important to consider financial issues to be able to plan for the future.

You and your partner may have children already or may be planning to have children in the future and wish to discuss their care and parenting arrangements for example education, religion, healthcare as well as financial issues.

It enables you to retain control and make informed decisions about restructuring your financial arrangements or arrangements in relation to the children but with advice from experts.

What kind of information and documents do I have to provide in collaborative family law negotiations?

Sufficient financial information must be disclosed to ensure that you and your partner are aware of the other's financial standing. Often this is done by way of financial summaries, with supporting appropriate documents. You and your partner sign a binding agreement providing relevant full and frank disclosure of all documents and information. Under the terms of the collaborative agreement, the lawyer must withdraw from acting for their client if he/she has withheld or misrepresented information intentionally or is participating in the process in bad faith.

If you consider that your partner is unlikely to be honest during the collaborative process, is likely to lie about his or her financial affairs, then collaborative family law is unlikely to be a good choice for you.

If it subsequently comes to light after the agreement has been concluded that one party has not been full and frank with their disclosure the weight and validity of the agreement is questionable and is unlikely to be relied upon if ever evoked in court proceedings

What are my alternatives to collaborative law?

Please let us know if you would like further information on alternatives to collaborative law, which includes agreeing a pre-nuptial agreement through solicitor led negotiation.

Who should I contact if I want more information about the Collaborative Law process or want to arrange an initial meeting?

Russell-Cooke's family team have specialists and qualified Collaborative Lawyers. Please contact them either by telephone or email if you would like more information or want to arrange an initial meeting. We are also able to discuss with you who your partner can engage as a collaborative solicitor to assist in the Collaborative Law process.

If you would like to know more please contact:

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