



FAMILY LAW GROUP



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PRE-NUPTIAL AGREEMENTS

Pre-nuptial agreements are not just for the wealthy anymore. In fact, due to the realities of married life today, they are becoming more and more common in Ukraine and around the globe. In many cases, such agreements save individuals a great deal of money, not knowing what lays ahead.

According to the Family Code of Ukraine, persons who have filed an application for marriage registration, as well as already married couples, may have a pre-nuptial agreement drafted to (1) govern the property relations between them, and (2) define their property rights and duties. Pre-nuptial agreements do not, however, govern the personal relations of spouses, or the personal relations between them and their children.

A pre-nuptial agreement (contract) should be in writing, must be certified by a notary, state the period through which it is effective, and can serve the following purposes:

- ✓ specify that the agreement or some of its provisions may still be effective after a marriage ends;
- ✓ allow the parties to agree on the property partition to meet the needs of their children, in the event of marriage dissolution; and
- ✓ provide maintenance to one of the spouses, irrespective of his/her ability to work or need for material support.

Note: Real estate, or other property whose ownership is subject to public registration, may not be transferred to one of the spouses under a pre-nuptial agreement. Pre-nuptial agreements can be amended only by both parties, with the revised amendment certified by a notary, as unilateral agreements are not allowed. Spouses also have the right to invalidate their prenuptial contract, with the rights and obligations terminating as soon as the cancelled agreement has been filed with a notary. Finally, pre-nuptials may be annulled judicially, upon request of just one spouse, on essential grounds specifically due to the impossibility of fulfilling the agreement.

ANNULMENTS & DIVORCE

Separations, annulments, divorces... they can all be quite difficult. Yet, if the appropriate steps are taken, potential financial repercussions and other problems can be mitigated. Working with the right people, knowledgeable in the areas of family law and able to provide expert legal advice in a timely manner, will make the process smoother and less complicated in the end.

To begin, whether you are legally separating, seeking an annulment or filing for divorce, it is extremely important not to allow your emotions to get the best of you. Rather, you must keep a level head and make certain that your financial affairs are fully in order before court proceedings begin. Furthermore, it is imperative that financial matters are addressed right in the beginning.





Annulment: An annulment is the legal equivalent to nullifying a marriage, as having been invalid from inception. The reasons for annulments vary, but generally include underage parties, blood relationships or the absence of mental/physical capacity. Below are a few of the most common grounds for annulment, according to the Family Code of Ukraine (Article 38):

1. The marriage was concluded with a person under the age of consent and not legally allowed to marry;
2. The marriage was registered with a previously married person;
3. The marriage was registered as a result of physical/mental violence;
4. The marriage was registered between an adopter and his/her adopted child;
5. The marriage was registered with a person who concealed a serious disease or illness dangerous to the other spouse and/or their descendents;
6. The marriage was registered without free consent of the spouses. For example, if upon marriage registration the person was suffering a mental handicap, was intoxicated or drugged, or in any capacity did not fully realize the significance of his/her actions and/or was unable to control his/her actions', or was otherwise judged incapable.

Divorce: Regarding marriage terminations, the courts will dissolve a marriage if the application corresponds to the will of both spouses, and such "dissolution" does not violate their personal or property rights, or the rights of their children. Dissolution is defined as the act or process of a whole separating into two or more parts. Husband and wife, however, may withdraw their application anytime before the expiration of this time limit.

As stated in the Family Code of Ukraine (Articles 104 — 109), marriages may be terminated in three ways, all based on the grounds of final judicial decision by the Public Civil Status Act Registration Authority,

(PCSARA). Once an application has been filed, the Agency will render its decision whether or not to dissolve the marriage within one month. At that point, the marriage is officially dissolved, despite any property disputes that may exist between the spouses:

- (1)** Married couples who do not have children may jointly lodge a marriage dissolution application, or just one of the spouses may apply. If, however, in the latter scenario, the other spouse does not want to terminate the marriage, then he/she may file an additional claim to the court. This petition should include all the important information regarding the marriage, the names of the husband, wife and children (if any), whether there is any separate property or community property, child custody, child support, spousal support or other relevant information, and be served to the other spouse.

- (2)** Married couples who do have children need to lodge a joint marriage dissolution application, which must be accompanied by a written agreement and state the following:
 - ✓ With whom the child(ren) will live
 - ✓ What kind of contribution the parent not living with children will make to ensure their living conditions, and
 - ✓ Rights for the childrens' personal education.

- (3)** One of the spouses may also initiate legal action towards the other spouse if (a) the wife is not currently pregnant, (b) it has been more than one year after the birth of a child, and (c) if the husband is not the paternal father of the procreated child. The exception here is for situations in which a spouse has committed unlawful conduct containing elements of crime in respect of the other spouse or the child.



Financial Considerations: Whenever a relationship is ending, one of the most common mistakes that people make is to not take stock of all personal finances when they are so preoccupied with feelings and emotions. The financial disasters, which are created during and after marriage dissolution, can impact them for years to come. The following list offers the most important financial considerations to address:

- ✓ **Prepare a detailed list of all assets and liabilities you are aware of.** Include everything — not just the house, car and furniture that you jointly purchased. Question what you have acquired with your spouse, during the time of your marriage (or in cases of common law marriage, during the time of co-habitation). After making this list, take action to protect your assets.

- ✓ **Hire a new accountant/business manager to help make certain that you are financially sound.** You no longer want the same person who was looking out for you and your spouse before. That person may not be objective, and may be torn between his alliance to you and your former spouse. Make sure your financial matters are private, and that the person you choose to look after them is your sole advocate.

- ✓ **Change your will.** Hire a new and independent attorney to draft this document. A will is the document most often overlooked, but can be one of the most important documents to update and redo. Consider your heirs, particularly children from a previous marriage, and ensure that your money ends up where you want it to.

Finally, before remarrying, consult with a family law attorney who can help you plan wisely. It may be difficult to look ahead now, but it's best to remain focused on the issues at hand and take control of your life and finances as best you can.

PROPERTY SEPARATION

Together with the dissolution of family relations, divorces also directly impact spousal rights with regards to their private, or personal, property. "Personal property" is defined as articles for personal use including, but not limited to: insurance indemnities paid within the framework of compulsory or voluntary personal insurance, various prizes, bonuses received for personal merits, etc.

Usually, in the process of dividing the joint matrimonial property, the wife's and husband's shares are equal, unless an agreement exists between them states otherwise. Most property acquired by the spouses during their marriage is considered to be their joint matrimonial property irrespective of the fact that one of them had no earnings or income during the marriage, for valid reasons such as training, keeping household, raising children, illness, etc.

The partition of all joint matrimonial property is usually made in kind. If the wife and husband fail to reach an agreement regarding the division of their property, the courts can step in to resolve this type of dispute. In doing so, the court takes into consideration the interests of the wife, husband and children, as well as any other essential circumstances.



Per Ukrainian Family Code, both wife and husband have the right to keep the following personal property: (1) anything acquired prior to the marriage, (2) anything acquired during the marriage as a gift or by succession/will, and (3) anything acquired during the marriage in exchange for his/her personal money. Specifically regarding any prizes received, the court may recognize the right of the other spouse to share such a prize if the other spouse somehow contributed with his/her efforts to obtain it.

Certain circumstances may also dictate whether or not a property that was acquired during the marriage belongs to just one of the parties. For instance, the courts may find that property acquired by one spouse during a period of separation, or during the marriage termination process, would thus become personal property of that spouse. Furthermore, if the funds for which the property was acquired, beyond their joint resources, include money belonging individually to one spouse, then his/her share of this property shall be proportional to his/her respective contribution.

In addition, items intended for professional occupation are awarded to the spouse who uses them in his/her professional activities. The cost of these goods is offset before awarding the additional property to the other spouse. Finally, if a spouse consents, then the financial compensation

may be given in lieu of his/her share of the matrimonial property, in particular the house, apartment, land, etc. Interestingly enough, when considering any dispute with regards to property division, the courts will consider peripheral evidence, such as:

- ✓ whether or not one of the spouses cared about the financial maintenance of the family;
- ✓ if one party concealed, destroyed or damaged the joint property; or
- ✓ if one party spent earnings in a way that was incompatible with the family interests.

Of course, the courts can always increase the wife's share of property distribution for a number of reasons, including if she will be living with the children, if she has an adult son/daughter who is unable to work, or if the amount of family maintenance seems insufficient to ensure their physical/spiritual development and necessary medical treatment.

ESTABLISHING PATERNITY

"Paternity acknowledgement" is the proper name given to the voluntary process when an unwed father becomes legally recognized as the biological father for child support purposes. This acknowledgement does not establish a legal, court-recognized paternity, unless it is then taken to the District Court level. Once the District Court recognizes the paternity, the father then has legal, enforceable visitation rights, and of course the monetary support responsibilities, as well.

Establishing paternity can be complicated without the help of a legal expert, and may be initiated in several ways:

1. upon application of both the mother and father of the child;
2. upon application of the man who claims to be the child's or children's father; or
3. upon a court-determined judicial decision.



In the first scenario, paternal affiliation is established upon application of two people who are not married to each other. Such an application may be lodged with the Public Civil Status Act Registration Authority, either prior to or after the child's birth.

In the second scenario, the man who is not married to the child's mother may lodge with the PCSARA an application to recognize him as the father of the child. Often, this includes situations in which the mother has died, been pronounced missing, deemed incapable, or not lived with the child for at least six months and does not take care of him/her. This application is accepted on the condition that the father's record has already been entered in the Birth Register in accordance with the Family Code of Ukraine (Article 135).

Finally, in the third scenario, any information confirming parentage of the child, and collected in accordance with the Code of Civil Procedure of Ukraine, constitutes the grounds for establishing parental affiliation by judicial decision.

CHILD SUPPORT

In family law, child support is most often arranged as part of the divorce, marital separation, annulment, determination of parentage or dissolution of a civil union, and may supplement alimony (spousal support) agreements. Child support is both an emotional and a financial concern, and it can produce a number of issues for both parents that are difficult, frustrating and life-changing. Working with attorneys who specialize in family law will make the process easier for everyone involved.

From a legal viewpoint, child support or child maintenance is defined as "the ongoing obligations for a periodic payment made by a non-custodial parent to a custodial parent for the care and support of children from a relationship or marriage that has been terminated".

Avoiding parental responsibilities constitutes the grounds for the courts to deprive the mother/father of their parental rights. It does not, however, mean that he/she is released from their responsibility to maintain the child.

(A) Determination of Child Support

In most cases, parents voluntarily exercise their

obligation to provide for their children, for protection of a comfortable life and for their education, through their growing years. According to the Family Code (Article 180), "the parents shall have the responsibility to maintain the child until he/she attains full age".

There are two ways (as determined by agreement of the parents) in which parents can assume the financial responsibility to maintain their child. The parent who does not live with the child may participate in his/her maintenance in cash, or in kind. Or, upon judicial decision, money for the child's maintenance is awarded as a share of earnings and/or as a fixed amount of the mother/father.

Child support is based on the policy that parents are obligated to pay for the support of children, even when the children are not living with both biological parents. One parent will typically be awarded legal custody, with visitation rights awarded to the non-custodial parent who remains obligated to pay a proportion of the costs involved in raising the child(ren).





(B) Explanation of Child Support

There is no need for the parents to be married, and only paternity/maternity need be demonstrated for a competent court to issue a child support obligation. According to the Family Code, the mother and father assume equal rights and responsibilities with respect to the child, regardless of whether or not they were married to each other. Furthermore, dissolution of a parents' marriage, and/or their living separately from the child, does not affect the scope of their rights, nor does it release them from responsibilities with respect to the child.

Significantly, even when a paying parent has been legally limited or prevented by the other parent from participating in or making decisions involving the upbringing of the child(ren), child-support costs are still legally obligatory. This does not, however, absolve the parent who the child(ren) reside with, from also paying a percentage of the costs incurred while raising them.



Regarding any additional expenses in cases of special circumstances with the child (development of skills, illness or injury), both parents must share these expenses. In cases of dispute, the extent to which one parent should share additional expenses for the child will be determined by the court, taking into account all essential circumstances. Those additional expenses can be financed in advanced, given in a lump sum or periodically, and/or be awarded on a permanent basis.

With regards to their child's education, parents shall decide all matters jointly. When one parent does not live with the child, he/she still has a duty to participate in the child's educational decisions and costs, and has the right to personal communication with the child.

In very few jurisdictions, the privilege of visitation (or access) is tied to child- support. In Ukraine, however, in accordance with the Family Code (Article 168), the mother/father deprived of their parental rights may take legal action to give them the right to access their child. The court may then allow single, periodical access to the child unless such access is injurious to the life, health and moral education of the child.

UKRAINIAN FAMILY LAW — FACTS & TRIVIA

Age of Consent: For women, the age is 17 years; for men, it's 18 years. Persons wishing to register their marriage must be of "marriage age" on the date of the registration. Interestingly, the court may lower the age on consent to 14 years if it is found that such a marriage satisfies the parties' interests.

Free Marriage: A marriage shall be based on a free consent of a woman and a man. Unlike some other areas in the world, forcing a woman and man into marriage is not permitted. Thus, an annulment is appropriate whenever a person is found to be legally incapable, or has



not realized the significance of his/her actions and (or) somehow was unable to exercise his/her control. A woman and a man may enter into only one marriage at a time, and they have the right to remarry only after the previous marriage has been dissolved.

Registration of Marriage: A marriage certificate attests to the state registration of marriage, and the Cabinet of Ministers of Ukraine must approve its existence. Registration of marriage is established for two main reasons:

- (1) to promote stable relations between a woman and a man, and
- (2) to protect the rights and interests of married couples, their children and the interests of the State and society in general.

Registration of the State of Health: Persons who have filed an application for marriage registration must inform each other about the state of their physical health. The State ensures this by requiring medical examination of any persons who have filed an application for marriage registration. The Cabinet of Ministers of Ukraine is the governing body over mar-

riage registrations, as well as over the medical examinations. Medical examination results are confidential and may be discussed only with those persons who filed the application for marriage registration. Importantly, concealing a serious physical disease or mental illness, either of which could be potentially dangerous to the other spouse and/or their descendants, is immediate grounds for declaring a marriage invalid.

Documents Required for Marriage: At the official marriage ceremony, the validity of all documents below (with the exception of the passport) is six months as of the date of issuance by the relevant authority:

- ✓ Passport (translated into the Ukrainian language)
- ✓ Legalized birth certificate (also translated into Ukrainian)
- ✓ Legalized document concerning the individual's current marital status
- ✓ Legalized original divorce decree, if any

Application for Marriage Registration: The local department of Vital Statistics and Civil Status can process a marriage application for any Ukrainian national. Usually, a couple will file their application for marriage registration with their local authority. If, for valid reasons, one or both parties are unable to personally file the application for marriage registration with the PCSARA, then their legal representatives may submit an application that is certified by a notary, instead. If a marriage is registered though not for a specific day, then the application will remain valid for three months from the date of filing, awaiting finalization.

Timing of Marriage Registrations: A marriage is registered one month from the application filing date. As an exception, should there be any serious reasons for an immediate marriage, the manager of the PCSARA may permit the registration of the marriage prior to the expiration of this time limit. In fact, if the bride appears to be pregnant or has already



given birth, or if there is a real threat to the life of bride/groom, then the marriage is registered on the day of the application, instead.

Conversely, should the manager of the PCSARA know of any legal impediments to the marriage registration, they may choose to delay the marriage registration for a maximum of three months. Complaints concerning such delays can be appealed to the courts.

Invalid Marriage: The following persons may not marry, and the marriage is deemed invalid, if the following scenarios apply:

- ✓ Persons are related to one another by blood
- ✓ Full-blood brothers and sisters have common parents; also, half-blood brothers and sisters, having one common parent
- ✓ Cousins, aunts or uncles, nephews or nieces, related by blood
- ✓ Relationships through adoptions, involving the natural child of an adopter and the child adopted, or between two adopted children

"Cold feet": Persons who have filed an application for marriage registration are deemed to be "engaged". However, this engagement does not create an obligation to marry. If one person gets "cold feet", the reluctant party has the duty to reimburse to the other party any expenses that have incurred in preparation for the marriage registration and wedding. Furthermore, if the person who withdraws has been offered a gift for the event of that future marriage, the deed of gift, upon the grantor's request must be returned.

Note that expenses are not subject to reimbursement if the marriage is avoided due to the following reasons:

1. unlawful or immoral conduct on the part of the bride or fiancée, or
2. by his/her hiding any circumstances of essential importance; for example, a serious illness, existence of a child, criminal record, etc.



WE CARE ABOUT YOUR FAMILY MATTERS

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