

# Till death do us part: but, just in case ...



Lawyer Maria Liffey and Advocate Debra Corbel of Bedell looks at the insurance policies you can take against a marriage breakdown

**T**HESE days, one would scarcely contemplate taking on a new family pet without first obtaining comprehensive insurance against costly vet bills. But what about getting married?

The sometimes eye-watering costs of a fiercely contested divorce would make a sickly pet seem like a good investment. However, very few would seriously consider obtaining insurance against the costs of a divorce at such an otherwise happy time in their life.

It is of course the case that nobody wants to contemplate an unhappy ending at such an exciting and joyful time, but with the UK having consistently the highest divorce rate in Europe, should more of us be following the example of the prudent pet owner and insuring against the unwanted costs of an unhappy turn of events?

The 2010 landmark English Supreme Court decision of *Radmacher v Granatino* is seen as a major step towards the English courts treating pre-nuptial agreements as binding, thus increasing the popularity of such agreements, previously viewed as somewhat of a rarity, obtained only by the rich and famous.

The reality is that bitter and expensive divorces are not exclusive to the rich and famous and strongly contested cases will be costly, no matter what the level of assets involved. Indeed, it does not automatically follow that a divorce has to be bitter to be costly. The process of separating financial affairs and dividing assets so as to ensure a fair result for both parties can be an involved and costly one, particularly in Jersey where we suffer from the absence of certain legislation such as a law that would allow for 'pension sharing', a now much used device in England and Wales.

'Divorce insurance' policies are being marketed to sit alongside nuptial agreements, and can be tailored to provide policy cover ranging from the costs of dealing with a challenge to a pre-nuptial agreement, to the

costs of embarking on a mediation or even full-blown divorce proceedings. Such policies can be obtained either by a one-off payment or by making regular monthly payments.

Pre- and post-nuptial agreements, ie formal agreements entered into between spouses after the marriage may be legally binding in certain circumstances. They can still be subject to challenge and their lasting effect will be very much dependant upon the circumstances in which the agreement was entered into. For example, in what circumstances it was signed and what level of advice each party received, together with what was known by the respective parties about the other's family and financial circumstances.

Such matters are not always straightforward. A thorough agreement will need to address all eventualities, present and future, such as inheritance or discretionary entitlements (eg benefits under trusts). In circumstances where one party to the marriage has pre-existing family wealth, there may be the interests of others in the family to take account of, and it maybe that other family members are reluctant to share information with a future spouse of a relative.

It is therefore crucial in all such circumstances for parties to obtain comprehensive legal advice, with specialist input where appropriate to deal with any particular assets or structures that may fall to be dealt with.

As with so many things in life, as unromantic as it no doubt sounds, the reality is that all may go much smoother in times of trouble, with a



The case of *Katrin Radmacher v Nicholas Granatino* was seen as a major step towards the English courts treating pre-nuptial agreements as binding. The wealthy German heiress had ensured that her banker husband signed a prenuptial agreement promising to make no claims on her fortune if the marriage failed. The English supreme court ruled for the first time that prenuptial agreements should have 'decisive weight' in English divorce courts

degree of pre-planning at the outset.

The economic downturn has resulted in a decline in the value of key assets such as pensions, businesses, realty and investment policies. Divorcing couples can therefore be faced with the additional problem of a diminished asset pot, making it considerably harder to

achieve the financial 'clean break' so often desired by both parties. The costs of a divorce will often serve to further reduce the available assets.

In difficult economic times such as these, perhaps romance and prudence must necessarily go hand in hand.

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Maria Liffey: 'In difficult economic times such as these, perhaps romance and prudence must necessarily go hand in hand'