

Will an Infidelity Agreement Save Your Marriage from Adultery?

Description

With societal development and increasing legal awareness, marital fidelity agreements between spouses are becoming a new trend. The primary intention behind such agreements is to legally bind both parties to proper behaviors during marriage, thereby protecting the modern institution of marriage, which is based on monogamy.



Infidelity: Marriage Killer

However, what is the actual legal validity of these loyalty agreements in practice? Can they genuinely enforce fidelity between spouses? Let's analyze the effectiveness of loyalty agreements through the civil law and case studies of China.

Typically, marital loyalty agreements include two types of provisions: those concerning personal relationships and those concerning property relationships. **Personal relationship provisions** may include clauses such as not initiating a divorce or relinquishing child custody rights. **Property relationship provisions** often involve stipulations about compensation for breaches or the division of joint property. But how effective are these provisions in practice? How supportive are they when courts adjudicating related cases?

According to the Civil Code of the People's Republic of China and related cases, **provisions concerning personal relationships** in marital agreements are generally invalid, while **provisions concerning property relationships** can be valid. Personal rights are statutory and cannot be altered through a contract. For example, clauses stipulating that the at-fault party cannot initiate divorce or must relinquish child custody rights are not supported by law.

Provisions concerning property relationships are relatively more supported by law, though there is still considerable controversy regarding specific compensation amounts and property division.

Compensation for Breaches: Agreements stipulating that the party breaching the marital loyalty clause must pay a specific amount in compensation are mostly recognized by courts. According to the Marriage and Family Chapter of the Civil Code, spouses should be faithful to each other, and the non-offending party has the right to claim damages. Thus, it is legally acceptable for spouses to specify the

obligation of fidelity and the amount of damages in their agreement. Some courts also support the view that the offending party should pay for emotional distress, which quantifies the obligation of fidelity without violating prohibitive legal provisions, making it legally valid. However, courts often adjust the compensation amount based on the parties' income and local living standards. It must be noted that some courts still hold opposing opinions on this.

In some cases, the courts believe that the marital loyalty agreement is mainly a kind of moral constraint, which should be consciously performed by the parties in good faith, and the law does not grant it enforcement.

Property Division: Provisions stipulating the division of joint property in the event of a breach are generally not supported by courts. Courts often view marital loyalty agreements as moral constraints outside the scope of judicial review, thus not serving as a basis for dividing joint property. Only a few courts, such as the Guangdong Provincial High Court, have fully supported the property division provisions in marital loyalty agreements.

In summary, the legal validity of marital loyalty agreements faces some challenges. However, having such an agreement is still more advantageous than not having one, as it helps monitor fidelity and mitigate marital risks. Especially for property-related provisions, there is a higher likelihood of court support. Nonetheless, compensation amounts will be adjusted based on economic circumstances and local living standards. Therefore, spouses should carefully consider legal risks when drafting loyalty agreements and seek professional legal advice to ensure that their provisions are reasonable, lawful, and enforceable.

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