

**Sample Provisions for
Cross-Border Issues in Prenuptial Agreements
Peter E. Bronstein**

CONFIDENTIALITY LETTER
(Protecting Negotiation of Agreement)

Re: _____ *Prenuptial Agreement*

Dear _____:

In connection with the prenuptial agreement to be prepared in connection with the anticipated marriage of _____ and _____, _____ will be producing certain information regarding his/her finances, including, but not limited to, his/her most recently-filed federal income tax return and a current statement of his/her net worth (the "Financial Information"). _____ considers such Financial Information to be confidential in nature, and wishes it to remain such. Accordingly, you are being asked to agree to maintain the confidentiality of such Financial Information. Neither you nor any of your agents and/or representatives (including, without limitation, accountants or other professionals) shall disclose such information to any person, firm, partnership, corporation or other entity except as specifically set forth below.

All Financial Information, except Financial Information which is a matter of public record, shall be deemed confidential. (For the purposes of this agreement, Financial Information shall include all reproductions and copies of Financial Information, as well as any notes and/or other records generated from Financial Information.) Such Financial Information:

1. Shall be used by you solely in connection with the negotiation, preparation and execution of the prenuptial agreement between _____ and _____.
2. Shall not be made available to or disclosed to any person or entity except:

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- a. Any financial or other professionals retained or consulted by you or _____ in connection with the negotiation, preparation and execution of such prenuptial agreement;
- b. Any attorneys, accountants, financial and business advisors whose professional advice or assistance is necessary for a party to properly satisfy the terms and conditions of this agreement; and
- c. Any attorneys, experts, court personnel or other similar professionals, as required, in connection with any action brought to uphold the terms of this agreement or to respond to a valid court order made in accordance with this agreement.

Financial Information shall be made available and disclosed to the persons set forth in this paragraph 2 only for the purposes set forth herein, and such availability and disclosure to such persons will be made only if such persons are given a copy of this agreement and expressly assent, in writing, to be bound by its terms and conditions.

The terms and conditions set forth above shall apply whether or not a prenuptial agreement is ultimately executed by the parties, and whether or not a marriage between the parties ultimately takes place.

Please signify your acceptance of and agreement to be bound by the terms of this letter by signing it where indicated below, having your client do the same, and returning the counter-signed letter to me.

Very truly yours,

I have read and understood the terms set forth above, and agree to be bound by them.

[Name]

[Name]

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CONFIDENTIALITY PROVISIONS
(Within Agreement)

(A) All financial information provided in Schedules A and B are provided in the interest of full disclosure and shall remain confidential. Accordingly, the parties agree that the Schedules, and all information contained therein, and the terms and provisions of this Agreement shall remain private and confidential. Except as may be required by law, in response to judicial or administrative order, process, subpoena or mandate, or in connection with any legal proceedings related to this Agreement, the parties shall not disclose any financial information contained in Schedules A or B, or any provision of this Agreement, to anyone other than the parties' respective attorneys, accountants and professional advisors who in turn shall be directed to refrain from making such disclosures. Each party further covenants and agrees that he or she shall not, in any public manner or forum (or in any manner or forum that is likely to become public): make any remarks or relate any information about the intimate life of the other party, or relate any information concerning the business affairs, business conduct, business associates, income, assets, investments or liabilities of the other party or the other party's family. The parties mutually acknowledge and agree that, for purposes of this Part A, isolated and casual comments made in a non-public context to family or social acquaintances, without malicious intention or expectation of economic gain, shall not be actionable.

(B) Without limited the generality of Part A of this Article, neither party shall, without obtaining the other party's advance written consent, directly or indirectly publish or cause to be published any diary, memoir, letter, story, photograph, interview, article, essay,

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account or description or depiction of any kind whatsoever, whether fictionalized or not, concerning their marriage or any other aspect of the other party's personal, business or financial affairs, or assist or provide information to others in connection with the publication or dissemination of any such material or excerpts thereof. As used in the preceding sentence, the terms "publish" and "publication" shall be deemed to include the presentation or reproduction of written, oral or visual material in any communications medium, including, without limitation, books, magazines, newspapers, the Internet, theatrical productions of any kind, movies, television or radio, in any language and in any jurisdiction. In the event either party breaches any of the covenants contained in Part A of this Article or in this Part B, the other party shall retain his or her rights under law and equity, including specifically, but without limitation, the right to seek an injunction preventing the publication (as defined in this Part B) of any such information, and the right to be compensated for legal fees and damages resulting from the breach.

CHOICE OF LAW

Controlling Law.

All matters affecting the interpretation and/or enforcement of this Agreement, or the rights or liabilities of the parties hereto, and any and all disputes or other matters regarding, relating to or arising out of this Agreement, shall be governed by and construed in accordance with the internal laws of the State of New York without regard to New York's choice of law rules, regardless of where the parties may later reside, and regardless of whether such place of

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residence is a community property or quasi-community property state or jurisdiction or within or outside the United States.

FORUM SELECTION

Choice of Forum

All actions or proceedings with respect to the validity, interpretation, enforcement or modification of this Agreement shall be brought exclusively in the Supreme Court of the State of New York, County of New York, provided it accepts jurisdiction. If the Supreme Court of the State of New York, County of New York has accepted or would accept jurisdiction of such an action or proceeding, then the action or proceeding may not be brought in any other jurisdiction.

ENFORCEMENT

No Invalidation of Agreement.

This Agreement shall not be invalidated or otherwise affected by any order, judgment or decree made in any court in any action or proceeding between the parties within or outside the United States.

No Action to Set Aside or Rescind Agreement.

Neither party shall make any application in any court, agency, tribunal or other forum for modification of any terms of this Agreement or to set aside or rescind any terms, or to otherwise

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contest the validity or enforceability, of this Agreement. To the extent that any law permits a party to make an application for modification of any terms of this Agreement, or to set aside or rescind any terms of this Agreement for any reason other than fraud, each party expressly waives such right.

If either party commences an action or proceeding to set aside or rescind, or to otherwise contest the validity or enforceability of, this Agreement, in whole or part, or to obtain anything beyond what such party is entitled to receive pursuant to this Agreement or to avoid paying anything that is due under this Agreement in a timely fashion, then (i) such party shall pay for all of the other party's reasonable attorneys' fees and costs incurred in defending against such action or proceeding, and (ii) to the extent that such party does not then own property sufficient to satisfy the payments or has failed to pay the amounts due pursuant to clause (i) of this subparagraph (b), then the other party shall be entitled to a credit in the amount of such payments or shortfall against any monies that may then be due pursuant to this Agreement from the other party to such party.

Defaults.

If either party fails to comply with such party's obligations under this Agreement, said default is not remedied within thirty (30) days after notice (as described in paragraph 49 below) to the defaulting party specifying such default,, and the other party commences an action or proceeding, or files any motion, petition, or order to show cause, to enforce this Agreement on account of such party's non-compliance with such party's obligations hereunder (the "defaulting party"), then in such event if the other party's action, proceeding, motion or order to show cause

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does result in the other party (the “petitioning party”) receiving substantially all of the relief requested, then the defaulting party shall pay all of the petitioning party’s reasonable attorneys’, accountants’, expert and other professional fees incurred in prosecuting such enforcement action or proceeding. Each party specifically consents that the amount of any such reasonable attorneys’, accountant, expert and other professional fees and expenses may be decided by a court of competent jurisdiction upon affidavit or affirmation as applicable, without need for an evidentiary hearing.