



Pre and Post Nuptial Agreements

Pre-Nuptial and Post-Nuptial Agreements



Applying for pre-nuptial and post-nuptial agreements has become increasingly common in recent years. Although such agreements are still not formally recognised by English Law, the Courts have serious regard to them if the agreements have been carefully drawn up in accordance with Law Commission guidelines.

Both parties must be aware that no agreement between them can override legislation in place that governs how the Court deals with financial and property matters in matrimonial proceedings. This means that a pre or post-nuptial agreements cannot stop a spouse applying to the Court for financial provision when divorce proceedings have been issued.

Case law is such that the Court should give effect to a pre or post-nuptial agreement where guidelines have been followed. It is increasingly common for the Court to seek to uphold such an agreement. Yet it is important to note that this may be disregarded in the circumstance that it is unfair to hold the parties to their agreement for some reason, usually because of unforeseen events.

If a couple enters into a pre or post-nuptial agreement, they should do so with the assumption that it will be binding. There are various safeguards which need to be in place in order to ensure that the agreement is given serious consideration by the Court in any subsequent divorce proceedings.

It is therefore important that legal advice is taken well in advance of a wedding ceremony to ensure there is plenty of time for the couple to discuss how they want to approach it and for the agreement to be drawn up.

Post-Nuptial Agreements

Though it is more commonly known for couples to draw up a pre-nuptial agreement before they wed, it is also possible to have an agreement drawn up after they are married (called a post-nuptial agreement). These may be advised if, for example, an inheritance is received, or if a gift of money or property is made from a family member which the parties wish to ring-fence for the recipient.

Why write a Pre-Nuptial or Post- Nuptial Agreement

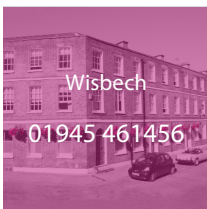
Although it can be a difficult discussion to have with your partner, pre and post-nuptial agreements can save parties both money and potential stress and upset if the marriage breaks down.

It can also provide some assurance to family members where money or property is being gifted, lent, or inherited, as it can show what is intended to happen to such money if the parties go their separate ways. Such agreements can be particularly important where the couple have children from previous relationships and want to preserve assets for those respective children should the relationship fail or where family businesses are involved.

Discussing pre and post-nuptial agreements is something we advise our clients to consider where one or other party is coming into the marriage with assets which they wish to preserve. Of course, everyone would hope that the agreement may never have to be relied upon, but for most couples the peace of mind it brings makes the existence of such an agreement worth it.

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