



Family Department

Pre-Nuptial Agreements

What is a Pre- Nuptial Agreement?

Pre-Nuptial Agreements are agreements made prior to marriage and provide certainty and protection by clarifying how the parties wish their assets to be divided between them if they later separate or divorce. They are often used where both or one of the parties have substantial assets at the time of the marriage.

Is a Pre-Nuptial Agreement legally binding?

This type of agreement is not automatically legally binding in England and Wales. The Court's discretion cannot be overridden as to how to redistribute assets and income on an application for financial remedy made as part of proceedings for a divorce or separation. However, when considering an application for financial remedy, the Court must give appropriate weight to any Pre-Nuptial Agreement as a relevant circumstance of the case. Such an agreement could therefore potentially avoid stressful and costly financial proceedings, or at least narrow the issues between the parties.

The Court will generally uphold a Pre-Nuptial Agreement that is freely entered in to by both parties with a full appreciation of its implications, unless there are circumstances which would make it unfair to do so. For example, the Court is unlikely to uphold an Agreement if it does not make appropriate provision for any children of the marriage or one party is now suffering from a serious disability not envisaged when the Agreement was signed.

Are there any pre-conditions for entering into a Pre- Nuptial Agreement?

Both parties must enter the Agreement of their own free will, without any pressure from the other party or anybody else. The Agreement is unlikely to be upheld if the Court finds evidence of any mistake, duress, undue influence, misrepresentation or unconscionable conduct such as exploiting a dominant position to secure an unfair advantage.

The parties should feel on equal footing and freely able to negotiate the terms of the Pre-Nuptial Agreement with each other. It is usually recommended that the parties have separate legal representation, to ensure that they have each had the benefit of independent legal advice.

When should we enter into the Agreement?

The terms of the Pre-Nuptial Agreement should be agreed as far in advance of the wedding date as possible. There should be sufficient time to consider the terms and receive legal advice about the effect of those terms so that there is no last minute pressure as the wedding day approaches.

What information will be required?

All information material to any decision should be made available to the parties before agreeing and signing the Pre-Nuptial Agreement and the parties must fully understand the implications of the Agreement.

The Law Commission has suggested that there is a need for reciprocal financial disclosure (ie. both parties should provide full evidence of their current and likely future assets and income.) This information should be full, frank and clear and it should clearly set out what separate or non-matrimonial property is held by both parties, to include:

- Assets owned before marriage;
- Inherited assets (received or anticipated);
- Gifts received.

Do we need to make provision for children?

A Pre-Nuptial Agreement cannot prejudice the reasonable requirements of any children of the family. In many cases, even if the parties have no children or no specific plans to start a family, it will be advisable to make general provision for any children in the Agreement, although it may be necessary to review those provisions at a later date. A Pre-Nuptial Agreement should ensure that any children receive adequate financial provision (unless there is no real possibility of the couple having children for any reason). The Agreement should include a clause providing for the Agreement to be reviewed to take account of the reasonable needs of any children (including step-children).

How can our solicitor try to ensure that our Pre- Nuptial Agreement will be valid?

For your Pre-Nuptial Agreement to be valid (and therefore more likely to be upheld by the Court) we must make sure it meets the following criteria:

- It must be contractually valid. There must be no factors present that could cast doubt on the free will of both parties and/or the information mutually disclosed at the time of entering into the contract between the two parties.
- It must be executed as a deed and include a statement signed by both parties to the agreement confirming they understand it is a qualifying Nuptial Agreement intended to remove the Court's discretion to make a financial order on divorce except to meet financial need.
- It must have been made at least 28 days before your wedding.
- Each party must have received full disclosure of material information about the other party's financial situation and have received legal advice at the time the Agreement is entered into.
- As already indicated in this Guide it must not prejudice any children.

The Process

When you instruct us to prepare a Pre- Nuptial Agreement we will take the following steps on your behalf:

- Meet you to take your instructions and advise you generally on the implications and potential content of the Agreement and the need for full financial disclosure.
- Discuss the requirement for independent legal advice for both parties, and if appropriate refer one party to a suitably experienced solicitor at another firm.
- Arrange the mutual disclosure of relevant financial information.
- Prepare a draft Agreement for consideration by both parties, and advise you on its effect.
- Negotiate and agree with the other solicitor the final version of the Agreement.
- Prepare the formal Agreement for signature and completion by the two of you.
- If required by you we will store the Agreement on your behalf and provide certified copies for you to retain with your own papers.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.