

# why make a pre-nuptial agreement?



Over 100,000 couples in England and Wales divorce each year. No one goes into marriage contemplating that the marriage will end, but it is becoming more and more common for people to seek to protect themselves financially.

Pre-nuptial agreements can be particularly relevant where you or your future spouse:

- Have built up business or investment assets before the start of the relationship
- Have received a previous divorce settlement
- Have already inherited money or are likely to do so in the future.

Currently these agreements are not legally binding in England and Wales. However, recent court decisions suggest that now more than ever if you have a pre-nuptial agreement the courts will look at it seriously as long as it has been prepared properly.

A pre-nuptial agreement demonstrates what the parties intend to happen financially if they were to separate. In some situations, a great deal of emphasis will be placed on what the intentions were at the start of the marriage. Sometimes, therefore, a prenuptial agreement can carry a lot of weight in deciding the final outcome of a divorce.

## How to make a pre-nuptial agreement work

For a pre-nuptial agreement to help a couple when they separate, there are several criteria which must be met.

- Both parties must have received their own independent legal advice about the content of the agreement.
- There needs to be full disclosure of each person's financial

position before the agreement is entered into so that both parties are fully aware of the financial implications of what they are signing. If information is not disclosed, the agreement will fail.

- The agreement needs to be signed at least 21 days before the date of the marriage.

## When will a pre-nuptial agreement be taken into account?

If the marriage has been short, more emphasis is likely to be placed on what the agreement says. This makes sense, as less time has passed since the parties signed the agreement. After a 20 year marriage, a document signed before the marriage is less likely to be relevant when deciding what is a 'fair' division of assets.

If a couple have children under 18, the content of any pre-nuptial agreement is potentially less relevant. This is because the Court's first concern will always be the children's welfare. The terms of any agreement are likely to be largely ignored in this case, especially if they are unfair on the parent with care of the children.

Pre-nuptial agreements can provide for reviews to take place throughout the marriage when certain events happen, for example, one party's ill health, or the birth of a child. If the agreement is reviewed at these times and revised if necessary to take into consideration the new circumstances, this improves the chance of it holding weight at a later date.

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## What happens if there is no agreement?

If a decision is not reached amicably and a court has to make a decision about how to divide assets when a couple divorces, they consider a range of factors. These include:

- The length of the marriage
- The age of the parties
- Whether there are children
- The relative earning capacity of the parties now and in the future.

The court considers all these factors and then decides what is 'fair'. We can advise you about what the court might view as fair in your situation and what a likely financial outcome would be were you divorce at some point in the future.

You obviously cannot plan for what assets you will have at a later date, or even necessarily if you will have children. What you can do is try to ensure that when you enter into an

agreement it is not already very unfair. If this is the case, your agreement is unlikely ever to be binding.

If your agreement is within the parameters of what is considered 'fair', and is kept this way by review throughout the marriage, you have a much better chance of the agreement being binding in the event of a separation.

## The next step

Money is one of the most common causes of arguments between spouses. If you go into a marriage without financial agreement and understanding, it stores up potential problems for the future. Talking about your finances is a sensible thing to do, and preparing a pre-nuptial agreement is the logical next step. If you would like individual advice, please contact a member of our Family team.

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