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Prenuptial Agreements ^[1]

Arrange what happens to your Assets upon Divorce - PRIOR to Marriage



What is a Prenuptial Agreement?

Before a couple marry, they may decide to try and regulate what is to happen to the assets of their marriage (or their civil partnership ^[3]) in the event of a divorce ^[4] or dissolution, by entering into a pre nuptial agreement.

Postnuptial Agreement

Parties to a marriage or civil partnership ^[3] may seek to regulate what is to happen about property ^[5] and finances if they separate and may decide to do a post nuptial agreement.

Prenuptial Agreement in the UK

Nuptial agreements would seem to be of an increasing significance, especially as prenuptial contracts are enforceable in many European countries as well as the USA, South Africa, Canada, Australia and New Zealand.

At present prenuptial agreements are not however legally binding in the UK.

For a long time they have been considered against public policy as they appear to undermine marriage, however there has been a recent change in judicial thinking with more judges now prepared to consider that a fair and reasonable prenuptial agreement signed in the right circumstances, should potentially be upheld. This means that although they are not enforceable in UK law, the court will now take any such prenuptial agreement into account when making its final decision as to how matrimonial assets should be divided.

Why a Prenup?

If prenuptial agreements are not legally binding at present, some may ask whether it is worth in fact actually entering into one.

When a court decides how to divide matrimonial assets between the parties it will consider "all the circumstances of the case." If two adults have signed an agreement setting out what they think should happen if they were to divorce [4] in the future, then it is quite appropriate that the prenuptial agreement should be taken into account as part of the circumstances of the case.

Therefore, if the agreement is signed by both parties, with the benefit of legal advice, with financial disclosure and without undue pressure on either party and a reasonable time before the wedding, this may well provide protection to the parties on divorce [4]. Even if the court does not uphold the agreement in its entirety, the agreement may still have some bearing on the outcome of the case by reducing the award, for example that the court may otherwise have made in their case.

How long before the Wedding does a Prenup have to be written?

There is no specific time frame for signing prenuptial agreements, but in recent case law (K v K [2003]) the court indicated that it would want both parties to have signed the agreement at least 21 days before the wedding. This way it could be satisfied that neither party had been forced into signing the agreement without having proper consideration of the contents and also having taken the appropriate legal advice before signing the same. The terms of the prenuptial agreement can sometimes take several months to negotiate and agree, so the further in advance that a solicitor is instructed the better. It is best not to rush the negotiation process as any pressure put on the parties, can in itself undermine the agreement.

If the law changed in the future which lead to the enforceability and relevance of prenuptial contracts. Parties will be required to show that:

- the contracts were entered into freely and voluntarily;
- both parties had the benefit of independent, competent legal advice and;
- full disclosure was made of all relevant financial and other circumstances.

Despite the fact that prenuptial agreements are not strictly enforceable nevertheless they are a matter that the court can take into account. Their relevance will depend on the particular factors of the case but can provide some protection.

Are you thinking about preparing a pre or postnuptial agreement and need advice? Contact the family team on 0121 746 3360 to arrange an appointment or via our [online enquiry form](#) [2]

Links

[1] <https://www.sydneyMitchell.co.uk/services-individuals/family-law/prenuptial-agreements>

[2] <https://www.sydneyMitchell.co.uk/contact>

[3] <https://www.sydneyMitchell.co.uk/services-individuals/family-law/civil-partnership>

[4] <https://www.sydney-mitchell.co.uk/services-individuals/family-law/separation-and-divorce>

[5] <https://www.sydney-mitchell.co.uk/services-individuals/family-law/separation-and-divorce/divorce-and-property>