

## Pre-Nuptial and Post-Nuptial Agreements

**A Pre-Nuptial Agreement** (Pre-Nup) is an Agreement which is entered into before marriage, which details how assets will be divided if the marriage breaks down.

**A Post-Nuptial** (Post-Nup) is entered into after marriage while a couple are still living together and allows a couple to plan financially, should their marriage break down.

The Law relating to Pre-Nuptial Agreements also applies to Post-Nuptial Agreements, the only difference being that a Post-Nuptial Agreement is entered into after marriage whereas a Pre-Nuptial Agreement is arranged before marriage.

Naturally, people who are getting married believe that they will be married for life. However, unfortunately today this is often not the case. Having a Nuptial Agreement in place can avoid the time, expense and animosity experienced in many divorce cases.

The current status of the law is that although they are enforceable in many countries outside the UK, as the law currently stands in England and Wales, Nuptial Agreements are not legally binding and cannot be used to limit or oust the jurisdiction of the divorce Court.

However, the law has developed so that there has been case law in which the Court have indicated that they should give weight to a Nuptial Agreement that is freely entered into by each party with the full appreciation of its implications, unless in the circumstances prevailing it would not be fair to hold the parties to their Agreement.

There are a number of matters that a Court would take into account when assessing the 'fairness'.

These include matters such as:

1. Whether one or both of the couple have failed to give full disclosure of assets and property before the Agreement was made.
2. Whether the Agreement complies with the general law of contract and contract requirements.
3. It is important that each party should intend that the Agreement should be effective.
4. If factors of duress, fraud or miss-representation exist, these will negate any effect the Agreement might otherwise have.
5. Unconscionable or unworthy conduct can reduce or eliminate the weight to be attached to the Agreement.
6. An Agreement cannot prejudice the reasonable requirements of children of a family.
7. Respect should be accorded to the decision of a married couple as to the manner in which their financial affairs should be regulated.
8. It is likely to be unfair to hold the parties to an Agreement which leaves one spouse in a predicament of real need, while the other party enjoys a sufficiency or more.
9. Whilst it is not definitive that there has to be independent legal advice before entering into an Agreement, it is advisable.
10. In terms of the timing of the Agreement, the Agreement should be entered into as far in advance of the marriage as possible, and ideally at least 21 days prior to the marriage.  
Whether the Agreement was unfair from the start.

It is also advisable to regularly review an Agreement and update it in the event of a change in circumstances.

For further advice in relation to the above and in relation to family law matters, please contact Steven Barrett or Heather Weavill at Alison Fielden & Co, on 01285 653 261, for an appointment.