

Pre-Nups and Post-Nups

What is a Pre-Nuptial Agreement?

A Pre-Nuptial Agreement is an arrangement entered into by a couple before they get married, and is designed to regulate what should happen if a marriage breaks down and ends in divorce.

If you are planning on getting married and you or your partner's family have an asset, such as a business or farm that they want to pass on, a Pre-Nuptial Agreement can help protect it. Pre-Nuptial Agreements can also be important in second marriages, or in marriages where one or both parties have brought wealth to the marriage.

What is a Post-Nuptial Agreement?

A Post-Nuptial Agreement is designed to deal with the same situation – in other words, deciding what should happen to each partner's assets after divorce. However, it is entered into by the couple during their marriage. It can be a good thing to consider if you have previously separated but are now in a relationship again and you want to avoid uncertainty if things go wrong.

Post-Nuptial Agreements and Pre-Nuptial Agreements in UK Law

Pre-Nuptial and Post-Nuptial Agreements are not strictly binding in England and Wales in the same way as a commercial Contract would be. However, the Courts have ruled that where agreements are freely entered into by each party – with a full appreciation of the implications – the Court will hold the parties to the Pre-Nuptial or Post-Nuptial Agreement unless it would be obviously unfair to do so.

The leading case affecting the way Pre-Nuptial Agreements are handled in the UK Law was *Radmacher v Granatino*, which was decided in the Supreme Court in October 2010. A great deal has been written about this by legal commentators and the press.

The Court will consider the following factors when deciding whether or not to hold a couple to a Pre-Nuptial Agreement:-

- Did each party have independent advice from Pre-Nuptial lawyers before the Agreement was signed?
- Did each party make full disclosure of all material financial circumstances and other relevant matters at the time the Agreement was signed?
- Did either party sign the Pre-Nup under undue pressure?
- Do the terms of the Agreement meet everybody's needs, including those of any children?

Not all Pre-Nuptial (and Post-Nuptial) Agreements will be upheld, nor are they automatically binding. However, if you are the financially weaker one within the marriage, you should assume that the Pre-Nuptial Agreement will be upheld. By entering into the Agreement you are signing up to the expectation that it will be.

Sometimes it is possible to improve on the terms of a Pre or Post-Marital Agreement in a subsequent divorce. For example, if basic housing or income needs are not met for yourself and any children you are looking after but you should be very careful and take independent advice from a Family Lawyer before signing any Agreement.

For further advice about such Agreements or other family matters, please contact Heather Weavill or Steven Barrett at Alison Fielden & Co Solicitors, on 01288 653261.