

Pre-Nuptial Agreements

Pre-Nuptial Agreements are formal written agreements between couples who are expecting to get married, setting out who will own what when they are married, and will usually attempt to set out what will happen if the couple gets divorced or separates.

In many countries outside the UK, Pre-nuptial Agreements are a normal feature of marriage, and are regularly enforced as binding agreements by foreign Courts.

In England and Wales, whilst such Agreements can be taken into account when a Court decides how to divide assets when a marriage ends, the Court is not bound by them.

However, over time, Pre-Nuptial Agreements have been given more prominence and can now be a decisive factor in determining the Orders that a Court will make. This may partly explain why, Resolution, the Association that many Family Lawyers in England and Wales belong to, have recently reported a 20% increase in the number of Pre-Nuptial Agreements that have been prepared.

One of the first legal cases that began to show a change in the way Pre-Nuptial Agreements could be taken into account by the Court was a case called K -v- K in 2003.

That case set out a number of factors that the Court felt to be appropriate in deciding the weight that should be given to a Pre-Nuptial Agreement, which included:

- Had both parties disclosed fully what their financial circumstances were;
- Was either party under any pressure to enter into the Agreement;
- Did each party have independent legal advice;
- Was the Agreement clear;
- Was the Agreement signed at least 28 days before the marriage;
- Was the Agreement a fair one.

It can of course be a difficult subject to broach between a couple who are planning to marry in the near future. However, making sensible financial arrangements can also be seen as being part of the overall preparations for getting married, and about looking to provide protection in the future.

If both parties decide to use a Collaborative Family Lawyer, then this means that the Agreement can be discussed and drawn up at meetings where both the couple and their solicitors are present, to ensure that both parties needs and concerns are addressed.

Please refer to this article for an initial free half hour appointment.

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