



Overview

A Pre-Marriage Agreement (or Prenuptial Agreement) is a document made by a couple before their marriage (or Civil Partnership) which sets out how their assets will be dealt with upon divorce/dissolution. They establish who comes out with what.

Do I need one?

A Prenup is not essential for everyone. However, if you find yourself in any of the following circumstances it is at least worth considering:

- You are getting married later in life and have already built up assets of your own and you wish to protect them
- You own a business
- You are expecting an inheritance
- You have children from a previous relationship and wish them to inherit rather than your spouse
- You have significant assets such as properties, investments, jewellery, antiques etc.
- You are getting married for a second time
- You have a significantly higher income than your partner

Are they legal?

Following a landmark decision in the Supreme Court, in effect, they are now binding unless they are considered by the court to be unfair. A list of factors have to be looked at by the court when considering the weight to be placed upon any prenuptial agreement in the event of a divorce such as whether any pressure was exerted upon the other to enter into the agreement amongst other things.

The Law Commission has recently recommended the introduction of legally binding 'qualifying nuptial agreements'.

Qualifying nuptial agreements would allow the couple to make a mutual agreement on how their finances or property should be divided on separation. However, they would only apply after the financial needs of both partners and their responsibilities towards any children had been met.

Furthermore, agreements would only be legally binding if both parties have disclosed all relevant information about their financial situation and had received legal advice. Importantly, the Law Commission specifies "financial needs" but not "reasonable needs," which can be more generous. Translating this, if no financial hardship was going to occur then the agreement could be upheld.

How can we help?

A Prenup Agreement is a bespoke document and as such should always be drafted by an experienced family lawyer. Mander Cruickshank Solicitors have a team of lawyers specialising in these types of agreements. Options such as Mediation and the Collaborative process can assist greatly in discussing the issues and reaching an agreement. It is vital that you raise the subject with your partner well in advance of your wedding or civil ceremony. You should allow at least 3 months for a straight forward agreement to be finalised – longer if it is complicated – and it should be signed at least 28 days before the ceremony if possible. However, if you have left it too late we can advise you on alternative options such as a Postnuptial/Registration agreement.

