

# FREETHS

## Family Law

### Do I need a pre-nuptial agreement?

Current family law states that in dealing with financial issues consideration has to be given to all the circumstances of the case. Therefore, courts can be asked to consider pre-nuptial agreements. In the case of *Radmacher v Granatino* the highest court upheld just such an agreement. The court said that such an agreement would carry more weight where the parties understood the agreement and its implications, entered into it on their own free will and were under no undue influence or pressure to sign it. The court added that sound legal advice is desirable and full financial disclosure may be necessary.

In addition to the above the court will be looking at the fairness of the agreement.

When you enter into a pre-nuptial agreement the circumstances which existed at the time the agreement was made can be very different to those that exist at the time a marriage breaks down. The court has to take into account all of the circumstances of the case and how encompassing the agreement is. For instance, the presence of children and their needs could affect the reliance the court places upon the pre-nuptial agreement.

People, from an emotional point of view, understandably when they are entering into a marriage, do not like to consider the consequences of that marriage breaking down. However, people are recognising, in particular where there are children from a previous marriage, that it is important to make their wishes about their assets clearly known and have them detailed in an agreement.

Many people prefer to have something in writing rather than nothing at all. A pre-nuptial agreement can fully set out the position of you and your partner. In the event of a breakdown of your relationship, at best it would be adhered to in full or in part. At worst, discounted.

It is advisable to enter into an agreement well in advance of the "big day"! At least three months beforehand. Bear in mind that before it can be signed it has to be prepared and considered which will take approximately eight weeks and both parties to the agreement need their own independent solicitor.

### Post-nuptial agreements

It is possible to have agreements after marriage. These are called post-nuptial agreements and are treated in a similar way to pre-nuptial agreements.

Financial uncertainty is one of the most stressful elements of any divorce and a pre-nuptial or post-nuptial agreement can be a useful tool for couples wishing to reduce this uncertainty. Until the recent case referred to above, the enforceability of pre-nuptial agreements had been very uncertain because they had been viewed as contrary to public policy. That principle has now been swept away which paves the way for these agreements to become more mainstream.

It is reasonable to try and plan your future and finances and to look at those in the context of a divorce particularly if one person has significantly more wealth than the other or either party has been previously married/divorced and may have children.

A pre-nuptial or post-nuptial agreement can help ease the worries, as they will document your agreement in writing and record what would happen in the future in the event of a separation or divorce. In recent years the courts have taken the view that informed adults should be able to plan for the worse and so increasingly these documents have been taken into account when financial decisions are made following marriage breakdown. These documents can help reduce uncertainty.

These are never simple or easy documents to draw up and there are several conditions that must be fulfilled:

- Both parties must enter into it freely and have independent legal advice.
- Both parties must give each other full and frank disclosure of their finances.
- It must be completed well in advance of the wedding date.
- It must make fair provision to meet the parties' needs.

The Law Commission reported last year and recommended legislation be put in place to enable qualifying nuptial agreements to become binding, before any Government gets round to putting this on their agenda it would be as well seek legal advice which covers your own personal circumstances.

If we can help you with any of these issues please call to speak with Rachael Oakes.



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