

Pre-nuptial agreements and post-nuptial agreements



Pre-nuptial agreements are written agreements between two people intending to marry as to what should happen with their pre-marital assets if the marriage fails and they divorce in the future.

When they are already married, they may enter into a post-nuptial agreement recording their intentions and wishes. Pre- and post-nuptial agreements are highly flexible agreements and can cover a variety of assets which one or both of the parties wish to keep separate from marital assets (e.g. family inheritance or business assets) in any future divorce.

The advantages of having a pre- or post-nuptial agreement in place include protecting certain assets, providing financial certainty and reducing friction in the event of a divorce – it is often easier to come to an agreement about finances when a relationship is good rather than following breakdown when emotions may be running high.

While the English and Welsh courts do not view pre- and post-nuptial agreements as binding, they are viewed as persuasive. A well-drafted pre- or post-nuptial agreement is more likely to be upheld by the courts so long as the court is satisfied that:

- Both parties have been transparent about their assets and full disclosure has been made
- Both parties have obtained independent legal advice
- Both parties understood the agreement and have entered into it voluntarily and without duress, usually 21 days before the wedding – although best practice is 28 days before the wedding
- The terms of the agreement are not manifestly unfair to one party or the other
- There have not been substantial changes in the couple's circumstances since the agreement was entered into, which may make an agreement which would have been fair at the time it was reached unfair in the new circumstances (for example both parties worked high paid jobs when the agreement was signed, but one of the parties has since given up or significantly reduced their income in order to provide care for children of the family)

In order for a pre- or post-nuptial agreement to have the best chance of being upheld by a court if challenged, it is important that both parties have separate legal representation when entering into the agreement. This way, both have received clear independent legal advice on the contents and cannot say they did not understand.

It is best practice for any pre-nuptial agreement to be entered into in good time, ideally 28 days before the wedding. While it is possible to enter into a pre-nuptial agreement up to the day before the wedding, such an agreement is at greater risk of being successfully challenged on the basis it was not entered into voluntarily – that it was entered into under duress by one party springing it on the other immediately before the wedding. It is advisable to instruct a solicitor to start to prepare a pre-nuptial agreement several months before the wedding, allowing ample time to draft and negotiate terms so neither party feels under pressure as the wedding approaches. A post-nuptial agreement can be entered into at any time after marriage.

When entering into a pre- or post-nuptial agreement, both parties should give full disclosure of their assets so that it cannot be argued moving forward that one of the parties did not have a full picture of the situation when entering into the agreement. Details of all assets should be recorded within the agreement itself, along with what the parties' intentions are for each asset. Income is also usually disclosed together with any liabilities. The court will put more weight upon an agreement which is fair and reasonable in the overall circumstances.

Finally, when a couple does wish to rely on a pre- or post-nuptial agreement, it is necessary to review it regularly – especially if there is a change in the family circumstances (e.g. the birth of a child) – to ensure that the terms remain fair in the new circumstances and likely to remain enforceable, or whether any amendments should be made.

At Astle Paterson, we have experts in family law who can assist in drafting an agreement tailored to your specific needs and provide advice on whether or not the terms of the agreement are likely to be deemed fair if challenged – whether we are drafting an agreement for you in the first place or advising on the terms of an existing agreement in light of new circumstances.

For more information on family law, please contact our expert, trusted Family Law & Divorce team on 01283 743969 or email enquiries@astlepaterson.co.uk

You can also follow us on Facebook, X and LinkedIn to keep up with the latest information.