

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.

Financial uncertainty is one of the most stressful elements of any divorce and a pre-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.

If we can help you with any of these issues, please call to speak with the Private Wealth team. They are highly regarded in their field and advise on all issues relating to cohabitation, premarital agreements, financial settlements, pensions, civil partnerships, children and divorce. The team is renowned for their empathic approach. The team adopts an innovative approach in developing solutions to difficult problems, carefully tailored to suit individual needs.

For more advice on these issues contact a member of the family team on 0345 128 6960 or email welcome@freeths.co.uk.