

Nuptial Agreements

A Pre-Nuptial Agreement is a legal agreement made between two individuals before their marriage has taken place. The agreement sets out how the couple wish their assets to be divided between them if they later separate or divorce. Some Pre-Nuptial Agreements also cover how the couple will arrange their finances during the marriage.

Individuals who are planning to become civil partners can also enter into a legal agreement before the registration of their civil partnerships. These agreements are often referred to as Pre-Civil Partnership Agreements.

A Post-Nuptial Agreement, on the other hand, is a legal agreement made between individuals who are already married. The agreement usually sets out how the couple wish their assets to be divided between them if they later separate or divorce.

Civil partners can enter into a similar legal agreement, usually referred to as a Post-Civil Partnership Agreement.

Commonly, a Nuptial Agreement sets out which party owns or will own certain assets on a future breakdown of the marriage. The agreement usually defines “matrimonial property” and “non-matrimonial property”. Matrimonial property usually includes assets acquired during the marriage and assets held in joint names, such as the matrimonial home and joint bank accounts. Non-matrimonial property usually includes things like assets owned before the marriage, inherited assets and gifts received by one party during the marriage.

A Nuptial Agreement may also deal with the treatment of income such as earnings.

The objectives of Pre-Nuptial Agreements and Post-Nuptial Agreements are basically the same, namely:

- **Clarification** - To clarify how the parties will deal with their financial affairs during the marriage, to enable the couple to have transparency at the start of the marriage.
- **Certainty** - To provide certainty for couples who wish formally to agree how their assets should be divided if they later separate or divorce.
- **Protection** - To protect assets (such as inherited wealth or pre-marital property) from a later financial claim.
- **Avoidance of litigation** - To limit the scope for uncertain, emotionally draining and financially costly court proceedings in the event of the future breakdown of the marriage.

Nuptial Agreements are not legally binding. This means that the parties to such an agreement cannot override the court's broad discretion under section 25 of the Matrimonial Causes Act 1973 (MCA 1973) to decide how to redistribute their assets and income on an application for financial remedy (what until recently was called “ancillary relief proceedings”). When considering an application for financial remedy, the court must, however, give appropriate weight to a Nuptial Agreement as a relevant circumstance of the case when considering the factors set out in section 25 of the MCA 1973. It may be that the court will give a Nuptial Agreement decisive weight, but this will depend on the circumstances of the case.

In the case of *Radmacher v Granatino* [2010] the Supreme Court considered the weight that should be given to a Nuptial Agreement by a court when exercising its discretion under section 25 of the MCA 1973. The Supreme Court held that *"The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to the agreement."*

The Law Commission has recommended reform of the law in this area by the introduction of “qualifying nuptial agreements” that would limit the court’s power to make financial orders upon a divorce or dissolution provided certain conditions are met. The government has yet to implement its recommendations.

It may seem unromantic for a couple planning to get married or enter into a civil partnership to consider what they would do in the event of a divorce. However, there is a growing desire in today’s society to allow couples greater autonomy and control to make the financial outcome of a breakdown more predictable.

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