

Pre-Marital Agreements

Pre-Marital Agreements have proven controversial as they are not regarded as binding under English Law, however, the Courts are increasingly taking them into account as the Persuasive Authority in deciding what would be a fair division under the Matrimonial Causes Act 1973.

We would advise that it is better to have a Pre-Marital Agreement where you want your assets protecting then not to have one.

In a recent case a Judge indicated that it is “increasingly unrealistic” to disregard such contracts, it reflects the law and morals of an earlier generation.

Pre-Marital agreements would set out what you and your future spouse of civil partners agree should happen in relation to finances in the event of the relationship breaking down.

There are important safeguards that should be met for the Agreement to be effective:-

1. Both parties must have separate independent legal advice preferably from a Firm with a specialist Matrimonial Department.
2. Full financial disclosure by each party
3. No undue pressure brought to bear on either party, therefore there needs to be time to reflect, for example a minimum of 21 days before the wedding
4. Special care regarding children for example reviewing the Agreement when the child is born
5. The Agreement has to be fair and realistic, in the light of current divorce law.

The Court would consider all the circumstances of the case and decide what is a fair outcome. It is up to the Courts discretion to take the agreement in to account. Experience has shown that the Judges are increasingly taking them into consideration and they can act as a starting point particularly if it is a short marriage and the circumstances have not greatly changed.

Pre-Marital Agreements are agreements entered into after marriage. These are binding and some people may consider turning the Pre-Marital Agreements into Post-Marital Agreements after marriage. Similar safeguards

need to be in place. They will not be binding if there is duress, misrepresentation or insufficient provision made for the children of the marriage.

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