

Pre & Post-nups

Overview

Not the most romantic of topics but one that does need to be at least considered when entering into marriage. We are in a society where there is a good likelihood that people will marry more than once – the statistics show that 1 in 3 marriages will end in divorce resulting in couples needing to take more control over their financial assets.

When might a Pre-nup be used?

- There may be a large difference between the financial position of the parties;
- Where the parties have been married before;
- There may be family inherited assets or personal assets that need to be protected;
- Where the parties want a method to resolve the finances in the event of a separation.

Pre-marital contracts as the name suggests are drafted before marriage and set out what should happen to finances in the event of a divorce. They must be structured in a particular way and meet certain criteria such as being signed at least 3 months prior to the marriage, but they can be a valuable way for resolving financial disputes and may prevent the need for court proceedings. Pre-marital contracts are not automatically enforceable in England and Wales at the moment. However, there have been a number of cases in recent years that make clear that couples entering into Pre-Nups, fully aware of the ramifications are likely to be held to them if the Pre-Nup is deemed to be fair at the time of divorce.

A Post-nup in contrast is drafted after marriage or civil partnership. The Post-nup lays out how the assets of a couple would be divided on divorce.

So, a Post-nup is similar to a Pre-nup except it is made after the marriage or civil partnership has taken place.

Post-nups are relatively new in the UK and became legally binding in 2008. Before obtaining either a Pre or Post-nup it is important to discuss the matter with your spouse/partner. This will lead to agreement over how assets will be divided and take into consideration the income/s within the marriage. Agreement will make the process painless and amicable. A typical Pre-nup and/or Post-nup would likely cover some of the following:

- How assets and liabilities should be dealt with
- Levels of current and future income and the likelihood of future inheritances
- How the property will be treated, both marital and any second homes.
- An inventory of personal and joint assets
- Does the Agreement tally with your wishes in your will in the event of death
- Maintenance agreements in the event of divorce.
- Maintenance agreements for children

In conclusion

It is vital that each party seeks legal advice from their own solicitor to avoid any conflict of interest.

Contact us



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