

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

01892 612500 or 0800 668 1898 (Freephone)

info@avtrinity.com www.avtrinity.com



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