

What is a pre-nuptial agreement and should we make one?



A Pre-Nuptial Agreement or more commonly known as a 'pre-nup' is a contract entered into prior to a marriage or a civil partnership. The agreement is entered into by the people intending to marry. Some common reasons for having a pre-nup are couples who have acquired assets before they married; who have children from other relationships; one party has specific health needs; who have or expect to inherit; people with family businesses, assets, farms etc.

The content of a pre-nuptial agreement can vary and will largely depend on the parties' circumstances. Generally an agreement will deal with what happens to the parties finances in the event of the breakdown of the marriage or divorce.

Is the agreement binding?

Although pre-nuptial agreements have been given greater recognition in recent times they still remain non-binding upon the Court. This means that the Courts retain full powers to deal with financial claims and to make orders, within divorce/dissolution proceedings, which could be different to the contents of the agreement. The Court can take into account some or all of the agreement.

There has been recent case law in which the Court has recognised the contents of a pre-nuptial agreement, when dealing with a financial settlement on divorce. When an agreement is entered into freely by both parties, upon them understanding the full implications of the agreement and there has been financial disclosure with the opportunity to receive legal advice, the Court is more likely to uphold the agreement.

The purpose of having an agreement in place is to set out what is to happen should the relationship end. The Court would only become involved if the terms of the agreement were disputed on divorce/dissolution. Many people will be able to give effect to the terms of their agreement without the distress and cost of court proceedings. It is nonetheless advisable to seek advice about converting the agreement to an order within divorce and made by consent as this will ensure that the terms become binding and final. If part of the agreement is to dismiss the possibility of future financial claims, a court order will be able to put this into effect.

A court order by consent is dealt with on paper and there is no need for anyone to attend court.

Should we make a Pre-Nuptial Agreement?

Although an agreement will not be legally binding, there are steps which can be taken in the preparation of a Pre-Nuptial Agreement to make it as reliable as possible and increase the likelihood of a court binding the parties to it;

- The Agreement should be signed at least 21 days before the date of marriage – when considering this it is important to recognise that it may take some time to obtain legal advice on the content of the proposed agreement, to prepare it, negotiate any terms and finalise/sign it. You should ensure that you allow plenty of time to deal with this before your marriage or civil partnership, ideally at least a couple of months.
- It is important that both parties have obtained independent legal advice and have disclosed details of all their assets and income to each other.
- The parties must enter into the agreement of their own free will; there must be no pressure on either one of the parties to enter into the agreement i.e. it will be seen as pressure if a party to the marriage tells the other that they will not get married unless the agreement is signed.

At Wards Solicitors, our family lawyers will be able to provide you with practical advice when considering whether or not you should enter into a Pre-Nuptial Agreement based on the current legal system, up to date case law and your individual circumstances.

This area of law is currently being considered by the Law Commission with there being a suggestion that there needs to be greater clarity for couples looking at entering into Pre-Nuptial Agreements. In the future we expect to see changes to the law which will make certain agreements legally binding. At the time of print however the proposals for reform remain outstanding and any future changes may not apply to earlier agreements.

If you would like some further advice please contact one of our specialist family lawyers at your local office.

For more information please follow the link [**wards.uk.com/service/family-and-divorce**](https://wards.uk.com/service/family-and-divorce) or to contact one of our family and divorce team please follow the link [**wards.uk.com/meet-the-service-team/family-and-divorce**](https://wards.uk.com/meet-the-service-team/family-and-divorce).

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