



# Pre and postnuptial agreements - Protecting unequal contributions

If you are about to marry or have already married there may be a variety of reasons why you may contemplate a pre or postnuptial agreement which will set out financial arrangements in the event of a divorce. A prenuptial agreement is entered into prior to but in contemplation of marriage whereas a postnuptial agreement is entered into after marriage. Both have equivalent standing and can cover those entering or who have entered civil partnerships.

Although no one enters a marriage thinking it will fail, pre/postnups are akin to an insurance policy which will only come into effect if things don't work out. They provide certainty and save a lot of time, stress, and cost on divorce.

Pre/postnups are popular amongst those who wish to protect and preserve premarital assets which may have come from their own endeavours, inheritance, gifts, or family trusts. In addition, you may have children from a previous relationship, and want to ring fence wealth for their benefit rather than it going to a divorced spouse. Not all married people want to pool their resources, and some want to keep their wealth separate, especially business interests.

## Warnings

- On divorce the courts have wide discretionary powers and the ability to transfer assets between spouses.
- The court will distinguish between matrimonial property (accumulated during marriage and co-habitation) and non-matrimonial property (property which has been accumulated prior to marriage or received from external sources during the marriage).
- Matrimonial property, is subject to a sharing principle which means equal division whereas non-matrimonial property is not.
- The distinction made by the courts between matrimonial and non-matrimonial property will be less marked the longer the marriage and sometimes the court will invade non-matrimonial property to provide for the other spouse.
- A family home is likely to be classified as matrimonial property even it is brought to the marriage by one spouse.
- Without a pre or postnuptial agreement there is a much greater risk that a divorcing spouse will benefit from the pre-marital wealth of the other or wealth received from external sources.
- Litigation is stressful, uncertain, time consuming and costly.

The court has confirmed that it is prepared to uphold pre and postnuptial agreements as long as they are fair. This means that for them to achieve their desired outcome they must conform to certain formalities, and they have to be substantively fair. Even if the outcome is not fair at the time of a divorce, they will still be taken into account.

Our Family Department has the skill and expertise to draft bespoke agreements for those that are about to marry or enter a civil partnership as well as those that are already married or in a civil partnership.

Agreements that are badly drafted without legal knowledge can often be worse than having no agreement at all. Engaging a professional in these circumstances is a must and will certainly be cheaper than the potential financial loss that could arise otherwise.

Our solicitors will assess your needs and recommend which agreement is suitable for you. They will explain what is required and draft a bespoke agreement to meet your requirements.

**If you wish to protect your financial position by way of a pre or postnuptial agreement, do contact a solicitor in our Family Department to see how we can help to ensure that your position is adequately protected on 020 7631 4141 or at [family@bishopandsewell.co.uk](mailto:family@bishopandsewell.co.uk)**

### Consider

- A pre or postnuptial agreement to record what you would want to happen in the event of a divorce or dissolution of a civil partnership. The court is prepared to uphold such agreements as long as they are fair, there has been financial disclosure and there is no suggestion of coercion.
- Making a will.

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