

SAFEGUARDING YOUR FAMILY'S FINANCES



**FAMILY
LAW**

**Pre-nuptial and
post-nuptial agreements**

If you're getting married or entering into a civil partnership, worrying about what might happen if you and your partner split up is probably far from your thoughts.

But sometimes things don't go to plan and relationships break down. This is often a painful and stressful process, so the last thing you need is further disagreements over financial matters.

This is where a pre-nuptial or post-nuptial agreement can help. Agreeing who is entitled to what before things go wrong significantly reduces the stress of a relationship breakdown and helps secure the financial futures of both of you.





What is a pre-nuptial agreement?

A pre-nuptial agreement is a formal agreement that two people sign before their marriage or civil partnership. It sets out who owns what and how your finances will be divided if the relationship breaks down or you divorce.

A post-nuptial agreement is the same, but it's drawn-up after the marriage or civil partnership, rather than before.

If you're entering into a pre-nuptial agreement, you need to do it at least 28 days before the marriage, to give you both a cooling-off period. With a post-nuptial agreement, there is no time restriction. You can draw one up at any time after the marriage or civil partnership. Although neither type of agreement is legally binding in England and Wales, the courts attach considerable weight to both types of agreement when dealing with divorce and separation.

What are the benefits?

Drawing up a fair agreement that clearly sets out what each of you will receive – and just as importantly, what you won't – significantly reduces the frustration and resentment a relationship breakdown can often cause.

It helps to keep the separation process as amicable and smooth as possible – particularly important if children or other family members are involved – and helps reduce the legal costs of a drawn-out disagreement.

Neither a pre- or post-nuptial agreement are legally binding. But as long as the agreement leads to a fair outcome, both of you receive independent legal advice, and you both fully disclose your financial positions, then the courts are likely to follow it so long as it is fair at the time.

It helps to keep the separation process as amicable and smooth as possible

What's included in a pre- or post-nuptial agreement?

There are no standard rules for pre- or post-nuptial agreements. They are tailored to suit the specific circumstances of different couples.

They will often deal with matters such as assets, income, pensions, company shareholdings, large sums of money and property. Sometimes they just focus on specific things, like a family inheritance which needs to be protected.

You can also build in additional entitlements that are triggered over time. For example, the agreement might specify that after five years of marriage, assets will be divided in a certain way, but if the marriage lasts for 10 or 20 years, they will be divided differently.

Protecting businesses

Nuptial agreements are a great way to protect family businesses or farms, particularly if you want to pass certain things on to your children. The agreement can define what each party is entitled to and who should retain the business, so it is protected to hand on to future generations.

Protecting inheritances

Nuptial agreements can also be used to protect a specific inheritance. An elderly grandparent might want to pass on an early inheritance to a granddaughter, for example, but be worried that if the granddaughter's marriage fails, she will have to give half her inheritance to her (ex)husband. This can be avoided if the granddaughter signs a nuptial agreement with her partner to say that the inheritance will stay with her if the marriage breaks down.

Protecting children

If you are marrying and have children from a previous relationship, you might want a nuptial agreement to ensure any assets you already have are kept out of the marital 'pot', so you can pass them on to your existing children. Without an agreement, there's a chance the assets you have brought to the marriage would have to be divided with your new spouse, meaning your children from the previous relationship might receive nothing.

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