Yours, Mine and Ours – Prenuptial/Postnuptial Agreements

If you've made the decision to formalise your relationship by getting married, now is the time to consider how you can protect your assets. This article will look at prenuptial and postnuptial agreements and how these can be used to protect assets.

Prenuptial and postnuptial nuptial agreements

A prenuptial agreement is a contract between a couple before they enter into a marriage or civil partnership. The agreement details how the couple's assets would be dealt with in the event of a divorce or dissolution.

A postnuptial agreement is very similar. The main difference is that the couple enters into the agreement after they have married or entered into their civil partnership.

The benefits of a prenuptial/postnuptial agreement

When planning your wedding/civil ceremony and preparing to enter into a marriage/civil partnership, a relationship breakdown might be the last thing that you want to think about. However, prenuptial/postnuptial agreements can provide peace of mind to a couple, particularly where one of the parties has been married before and divorced, or where there is a disparity in wealth at the start of the marriage.

Prenuptial/postnuptial agreements can be useful where someone has generated, or inherited, a significant amount of wealth before the marriage and may have a significant asset such as a business that they want to protect. Nuptial agreements can be used to try to ring-fence certain assets, acquired pre-marriage or received from a third party during the marriage, as "non-matrimonial property".

Sadly, marriages and civil partnerships do not always work out as anticipated, and nuptial agreements can be helpful planning tools, as a form of insurance policy, in case of future marriage breakdown. Even where there aren't significant differences in wealth or assets held, nuptial agreements can help to limit post-separation legal costs as both parties have more certainty about what will happen in the event of a divorce.

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Are they legally binding?

There have been lots of cases in recent years about the enforceability of nuptial agreements. Although not automatically enforceable, the Supreme Court has determined that nuptial agreements will be upheld if certain criteria are met and it would be fair to hold the parties to the agreement. It is therefore very important for a couple to both seek independent legal advice on the terms of their agreement to ensure that it is drafted correctly and that it meets the requirements of a nuptial agreement.

Key requirements to consider when entering into a prenuptial and/or postnuptial agreement

- The agreement must be freely entered into by both parties, with no undue pressure/influence or fraud from any other person.
- The parties must both have a full appreciation of the terms and implications of the agreement.
- It must be fair to hold the parties to the agreement in the circumstances prevailing on divorce.
- The Law Commission recommends that prenuptial agreements should be signed at least 28 days before the wedding.

If you're planning to get married and require any assistance or advice on a prenuptial agreement, please contact our team of family solicitors on 01202 786153 to arrange for advice.

For those who have previously divorced and are now looking to enter into a second marriage, the next article in our Marriage Checklist series will explore extra considerations to take into account. Stay tuned for more information on navigating a second marriage successfully.

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If you would like further information, please contact our specialist Family Solicitors by emailing online.enquiries@LA-law.com or calling 01202 786153.

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