



# PRE - NUPTIAL AND PRE - CIVIL PARTNERSHIP AGREEMENTS

These are agreements entered into before a marriage or civil partnership which seek to regulate what will happen to the parties' assets in the event of a future divorce or civil partnership dissolution. The law relating to agreements of this type is undergoing rapid change and development.

Whilst agreements of this nature are not strictly binding on the Courts in this country in the event of a breakdown of the relationship, Judges will take them into consideration as one of a number of factors in financial proceedings between the parties. An agreement will evidence the intentions of the parties at the outset of their union and will certainly be a good starting point for financial negotiations upon separation.

Just how much weight the agreement will carry or whether the Court will take it into consideration in its entirety will depend on the parties' circumstances at the time of the divorce or the dissolution.

In deciding whether to take a pre-nuptial or pre-civil partnership agreement into account, the Court will consider a number of issues including the following:

- III Whether both parties had given full and frank disclosure to each other at the time the agreement was drawn up
- III Whether the parties to the agreement had each taken independent legal advice

- III How well the parties understood their financial circumstances at the time the agreement was drawn up
- III The impact of the agreement having regard to the current circumstances of both parties
- III How long ago the agreement was signed
- III Whether either party was put under any pressure to sign the agreement
- III Any significant changes in the family - for example the birth of children, changes in the financial circumstances of either party or lasting illness may be relevant factors.



Certainly for a party who is bringing assets into a marriage or a civil partnership, considering marrying or entering into a civil partnership for a second or subsequent time or attempting to preserve assets for children of an earlier relationship, then an agreement should strongly be considered.

**Due to the ongoing changes to the law in this area drawing up an effective agreement is a specialised task. It is therefore important to use the services of a specialist Family Solicitor to ensure that the agreement is properly structured thereby allowing the maximum chance of it standing the test of time.**

**Is it possible to draft a one-sided Agreement to protect one party?**

This course of action is not possible. This

would contravene the Court's requirements for the agreement to be fair and reasonable in all of the circumstances.

**Is it necessary for the parties to disclose their income and assets?**

Yes: that is what the parties are trying to protect. By fully identifying the assets at the outset the parties will be in a position at the appropriate stage to point to their agreement as to who should retain the assets or income in question. Incomplete or vague descriptions or values of assets may give rise to disputes at a later stage.

**If the marriage or the civil partnership does not work out will each party be guaranteed to receive the assets and income they took into the relationship?**

There is no guarantee. Each case turns on its own merits. It is for the Court to decide whether the agreement is fair and reasonable in all of the circumstances at the

time that a party seeks to rely on it. An agreement is the clearest indication to the Court of how the parties had wished their assets and income to be allocated in the event of divorce or dissolution. However it is important to remember that at present the law does not recognise these agreements as binding, although they will be taken into consideration along with all other relevant circumstances.

**This Guide contains summaries of complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems.**

**For further assistance or information please contact:**

**Mary Kaye, Partner  
Head of the Family Law Team on  
T: 0870 763 1687 or  
E: [mary.kaye@martineau-uk.com](mailto:mary.kaye@martineau-uk.com)**



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