

Pre-Nuptial Agreement

Pre-Nuptial Agreements are becoming more popular due to the fact the Courts have now stated that as long as they are entered into in the correct fashion, they can be relevant in subsequent divorce proceedings.

What is required:

1. Full financial disclosure from both parties so that each party is aware of the financial settlement which they may have been entitled to if they had not entered into a pre-nuptial agreement. If full disclosure is not provided by one party, the agreement may be void, if, for instance, an asset of significant value is discovered by the other party later in the marriage.
2. Both parties should obtain separate legal advice so that they understand the agreement, and are aware of its implications and enforceability (or lack of it) in the Courts.
3. The agreement must not contain terms that would mean the pre-nuptial agreement is void or voidable as a contract at common law. This means that it is vital that the meaning of the agreement must be clear enough to be enforceable as a contract.
4. It is important that both parties willingly sign the pre-nuptial agreement. There must not be any pressure put on either party by the other, or by any other person such as a parent. This includes the possibility that the more financially well-off party pressurises the other into signing the agreement with the threat that the marriage will not go ahead if they do not sign.
5. It is recommended that the pre-nuptial agreement be negotiated and concluded at least 6 weeks prior to the proposed date of marriage. This time period provides an opportunity for reflection and avoids any suggestion of undue influence which may arise from the time constraints. This also allows everyone to concentrate on the most important subject, the wedding itself.
6. It must be borne in mind that any unforeseen circumstances that arise during the marriage may mean it is unjust for the parties to be held to the agreement.

Things to think about:

List all assets – consider whether any assets were pre-owned before relationship began

Think about what you think would be a fair division of the capital assets and income if you separated – if your circumstances were as they are now, and if they change in the future – for example birth of children, illness, loss of employment. The more factors you anticipate and plan for, the more likely the agreement will be upheld as just.

What do I do now?

Oxley & Coward can offer confidential assistance and advice in relation to Pre-Nuptial Agreements to protect you. Call us now on 01709 510999 or email family@oxcow.co.uk