

PRE NUPTIAL AGREEMENTS

At Blythe Liggins we advocate the preparation of pre-nuptial agreements (quite often referred to as pre-nups).

A pre-nup is an agreement in which a couple record their rights and obligations in relation to property, capital income, debts and any other assets. They can elect as to how they want to divide assets should their marriage fail and what financial support they will provide to the other in the event of separation or divorce.

Without a pre-nup the court can upon divorce include all assets including any pre acquired assets. A court can take into account all of the available assets and not just the marital acquest.

Pre-nups are not strictly enforceable in the UK as there is currently no legislation making them legally binding. However, UK courts do now recognise such agreements and are willing to hold parties to such an agreement provided that they are fair in all the circumstances. This principle was first established in the case of *Radmacher v Grantatino* in 2010 when the court refused to vary a pre-nuptial agreement entered into by the parties before they married.

Indeed the Law Commission, a statutory independent body that advises on the law, has recommended that there be a change in the law whereby such agreements should be upheld unless they are found to be unfair.

A carefully drafted pre-nup should therefore afford the parties a large degree of protection provided that the financial needs and any financial responsibilities towards the children have been met. You can include a review provision within a pre-nup in case there is any change of circumstances specifically catered for in the agreement such as ill health, redundancy, having more children etc.

It is important when preparing a pre-nup that both parties fully disclose their finances and are both afforded the opportunity of taking separate legal advice. The agreement must be freely entered into so a pre-nup should be executed (signed) no fewer than 21 days before marriage. This should avoid a party to such an agreement being forced to sign it shortly before their wedding day. At Blythe Liggins we suggest that a pre-nup is ideally signed a month before your wedding day.

At Blythe Liggins we will prepare a bespoke pre-nup to cover your particular needs. We will make sure that it covers everything that you want it to. It is a good idea for

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parties to think about what they would like to happen if their marriage should ever come to an end. For example:

1. What would happen to property that either of you brought to the marriage?
2. What would happen to the family home?
3. What would happen to any property given to you or inherited during the marriage, or any assets you paid for yourself?
4. What would happen to any income or assets derived from trusts?
5. What would happen to any money you've saved earned during the marriage?
6. What would happen to your pensions?
7. How would you deal with debts?
8. Would either of you pay or receive any maintenance and if so for how long?
9. What kind of events might require a review?
10. How would you divide contents to include ownership of vehicles or maybe a joint art or record collection that you may have built up over the years?
11. What kind of arrangements would you put in place for the children that you have or are likely to have?

Pre-nups are not just the reserve of wealthy couples. Increasingly we are being asked to prepare such agreements for couples marrying for the second time who want to protect their respective children's future inheritance. In addition, young couples starting out on life's journey together are also looking to prepare such agreements, particularly where one party may be contributing significantly more than the other towards the marriage.