

PRE-NUPTIAL & POST-NUPTIAL AGREEMENTS

When parents separate they have to make important decisions about their children's upbringing. Here we have set out some legal guidance on what orders the court can make if parents are unable to come to an agreement.

1

Pre-nup and post-nup's are not just for the extremely wealthy and it could be advisable to enter into an agreement in the following situations;

- A second marriages between parties who wish to preserve their pre-acquired wealth for the benefit of the children of the previous marriage(s)
- Where one or both of the parties wishes to ring fence inheritances they expect to receive.
- Marriages where there are substantial trust assets, including where such assets are derived from gifts or inheritances.



2

A **pre-nup** is a contract entered into by a couple before they get married that sets out what will happen to their assets in the event that the marriage breaks down.

A **post-nup** works to achieve this too, however, this is entered into after a couple have married.

3

Although pre-nups and post nups are not legally binding in England and Wales, properly drafted Agreements are more likely to be upheld by the Court now, than they have ever been before although to determine how much weight should be placed on the agreement will depend on the circumstances of each case

4

During divorce proceedings, the Court has very wide discretionary powers to distribute matrimonial assets to achieve a fair and reasonable balance between the parties having regard to their needs and resources, the needs of any relevant children and all the circumstances of the case. A pre-nup will be one of the circumstances which the Court will take into account.

5

In order to have the best chance of being upheld, pre-nups and post-nups;

- Contents should be fair.
- Both parties must obtain independent legal advice before entering into the agreement.
- Both parties must provide disclosure of their financial circumstances
- Both parties should consider and reflect on the terms of the proposed agreement, at least 1 month before the wedding date. Couples who leave it too close their wedding date may be best advised to start their discussions for their agreement but sign a post-nup after the date of the wedding.
- There must no question of duress, undue influence or misrepresentation. Both parties must enter the agreement freely.

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