

Pre-nuptial Agreements

Protecting what you own
if you were to part ways



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What is a Pre-nuptial Agreement?

If you are getting married, you may wish to protect your assets, particularly if you have brought significant assets into the relationship, such as inheritance or trust assets.

A Pre-nuptial Agreement is a contract freely entered into between couples who are engaged to be married.

In recent years the Courts have been willing to place an increasing amount of weight on Pre-nuptial Agreements when a couple divorce. However, certain safeguards must be met for the Court to uphold such agreements. These include the following factors:-

- You and your partner must enter into the agreement at your own free will and seek independent legal advice
- There must not be any undue influence or pressure on either of you
- You both must give full financial disclosure to the other before entering into the agreement
- The agreement must be fair
- The agreement has been finalised (agreed and signed by both parties) in sufficient time before the wedding.

What if you are already married?

Post-nuptial Agreements allow people who are already married to set out what would happen if they were to separate or Divorce.



What else do I need to think about?

It is important to obtain legal advice about entering into a Pre-nuptial Agreement well in advance of the date of your marriage to make sure that there is enough time for both you and your future spouse to consider and agree the terms of the agreement.

If you entered into a Pre-nuptial Agreement less than 28 days before your marriage, then the Court could draw the conclusion that the agreement has not been freely entered into, and may not uphold the terms, in later divorce proceedings.

How can we help you?

At Chafes Hague Lambert we can assist you with the following:-

- Advising you in relation to entering into a Pre-nuptial Agreement
- Advising you as to the enforceability of Pre-nuptial Agreements
- Negotiating the terms of the Pre-nuptial Agreement
- Drafting a Pre-nuptial Agreement and ensuring compliance with the required procedural safeguards
- Guiding you through the process of disclosing your finances to the other party.

Frequently asked questions

Q. Are Pre-nuptial Agreements always upheld?

No, the terms of Pre-nuptial Agreements are not always upheld. Various factors can influence whether the terms of the agreement are upheld. The procedural safeguards must be complied with. In addition, in longer marriages for example, a married couple's finances become more intermingled, meaning the Court might attribute less weight to a Pre-nuptial Agreement.

Q. What if we have children after the Pre-nuptial Agreement has been entered into?

If you have children, then a Court may not uphold a Pre-nuptial Agreement in later divorce proceedings if the agreement does not sufficiently provide for the children or the parent with whom the children will reside. Within divorce proceedings, the welfare of any children is the Court's paramount duty and a person entering into a Pre-nuptial Agreement must be aware of this limitation.

Q. My future spouse and I need to obtain separate legal representation?

Yes, both parties should take independent legal advice. If one party signs a Pre-nuptial Agreement without legal advice, the Court may attribute less weight to it later on down the line. Both parties would therefore be strongly encouraged to each instruct a lawyer to advise them on the terms of the agreement.

Q. Do I have enough time to enter into a Pre-nuptial Agreement?

You need to have a signed agreement no later than 28 days before the date of your marriage, or the Court could infer later on down the line that the procedural safeguards have not been met and the agreement may not be upheld.

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