

Pre- and Post-Nuptial Agreements (PNAs) are increasingly receiving respect and recognition in our courts. PNAs are not final and binding as they stand, in that courts retain overall jurisdiction to consider all the circumstances and to decide what is 'fair'. However, if they are well drafted and both parties have received full advice, they have been described as the 'magnetic factor' by the courts and given priority over the factors listed in s.25 Matrimonial Causes Act 1973.

If you are thinking of marrying, and especially if it is your second marriage, you may want to consider entering into a Pre-Nuptial Agreement with your spouse. Indeed, even if you are already married these documents are useful by way of a Post-Nuptial Agreement, to verify arrangements between you and may be seen by courts as an indication of your desire to be bound by the terms of your PNA, therefore strengthening its influence on the settlement.

At Morrisons, we have experience of preparing both Pre- and Post-Nuptial agreements and can advise you on the process and the key considerations when preparing such an agreement. We recommend that, whatever your circumstances, you take expert advice before either preparing a PNA, or later relying on one to shape any settlement following a relationship breakdown.

The key advantages of PNAs are:

- **Protection of assets:** You can protect certain assets you may wish to ring-fence as 'non-marital' assets, such as inherited property, family heirlooms, or property acquired before the marriage. If the pre-nuptial agreement ring-fences such property, the court is less likely to award a share of that property to the other party on divorce.
- **Protection of family members:** If either of you have children and/or assets from a previous relationship, a PNA can be used to try to protect the financial interests of the children by ensuring certain assets are ring-fenced for them in the pre-nuptial agreement.
- **Certainty:** You can both agree at the outset of your marriage how your finances are to be divided if you later separate or divorce. This could save you the uncertainty, time and stress of litigating about your finances if you do separate. It can also save the costs involved in settling finances in any such proceedings.
- **Transparency:** You should each provide financial disclosure of your assets and income in the PNA, giving openness and honesty from the outset and helping you organise your finances during the marriage.

There are certain key points to consider when preparing a PNA:

- Both parties must have independent legal advice;
- Full financial disclosure must be given by both parties;
- To have real effect, Pre-Nuptial Agreements must be signed no less than 21 days before the wedding;
- The agreement must not be signed under any pressure, duress or other such situation that might otherwise cause a contract to fail;
- Parties must 'understand the consequences of the agreement'. They must be entered into 'willingly and knowingly'.
- The PNA must be seen by the court to cover 'needs' of both parties. (If it does not, it would not be upheld by the court.)

These agreements are very subjective and the question of whether or not they will bind parties will depend on the circumstances of each case. The court will consider the circumstances at the time of the shaping of the agreement and also the circumstances at the time of adjudication.

Circumstances are bound to change from time to time and the agreement must allow for change. It is strongly advisable to formally review PNAs from time to time and to update financial disclosure on each review.

Post-Nuptial Agreements

Courts have commented that these agreements tend to be made under less-pressured circumstances than Pre-Nuptial Agreements, and therefore should carry more weight.

At Morrisons, we advise our clients to affirm any Pre-Nuptial Agreement with a Post-Nuptial Agreement sometime after the wedding, by way of initial review. It may be appropriate to update a few things at that time, particularly if finances have changed.

Updates of this nature have been held by the courts to show genuine intent to be bound by the agreement and are therefore very helpful in giving strength and certainty to the agreement.