

Hope for the best, prepare for the worst

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While pre-nuptial agreements are becoming more and more popular, many still see them as cynical and unromantic. After all, why would you want to marry someone if you thought you might break up with them? However, it may be worth thinking of a pre-nuptial agreement as an “insurance policy” rather than a “break-up agreement”.

What do they do?

Ensure Stability

The fact is that people are getting married at a later stage in their life. By this time, they are financially stable and will have a few assets under their name – the flat they saved up for, the property they inherited or the shares that have been slowly gaining value since the recession. It makes sense to put in place an “insurance policy” to protect your assets.

It is not just the financially stable that benefit from entering such an “insurance policy”. The agreement may contain provisions in which the weaker party (financially speaking) is entitled to a lump sum, a right of residency or even maintenance for a specific period following the break-up of the relationship.

Give weight to your agreement

Although pre-nuptial agreements are not legally binding, in 2010 the Supreme Court set out a test ([Radmacher v Granatino](#)) which Courts should follow to determine how much weight should be given to such an agreement.

Firstly, the Court must ensure that the parties were open and honest in disclosing all their pre-marital assets and debts – if you fail to mention a pre-marital asset that is later discovered, nothing gets protected.

Secondly, the Court will check that both parties knew what they were signing – both parties will need to seek and obtain independent legal advice.

Thirdly, the Court will check that one party did not coerce the other party into signing the agreement – so you cannot surprise your partner with a pre-nuptial agreement at the altar. It is preferable that an agreement is signed at least one month before the wedding.

Finally, the agreement cannot prejudice either party's position as at the date of the divorce. Generally, the longer the marriage lasts the less weight the pre-nuptial agreement will carry in the eyes of the court. This is because the parties may have gained, lost or even merged their debts and assets. Furthermore, healthcare needs may have changed or there may be a child to take into consideration as at the date of the divorce.

In 2010, the [Office for National Statistics](#) revealed that 42% of marriages in England and Wales ended in divorce. Can you guarantee that you'll make the 58% that doesn't?

Even if you have been married for some time it may be worth reviewing and updating your agreement if you have already made one. However, if you have not yet made one you may want to consider entering a post nuptial agreement.

Contact one of our family solicitors today for more advice and information.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

