

Prenuptial & Cohabitation Agreements

To whom and when should they apply?

Nuptial agreements are attracting an increasing amount of client interest following the decision of the Supreme Court in *Radmacher v Granatino* in 2010.

Perhaps once shied away from as being unromantic, controlling and pessimistic about the relationship, nuptial agreements are now one of the best methods of promoting financial certainty in the event of family breakdown and minimise the risk of potential future litigation and legal costs.

A nuptial agreement allows parties to enter into marriage safe in the knowledge that specific personal, or more likely family assets, are protected. The parties are then in a position to make an educated and informed view of a fair solution in advance thereby avoiding potentially difficult discussions in the future. Inevitably the parties are in a better frame of mind approaching the marriage than upon separation where emotions are likely to run high.

In particular, nuptial agreements can be used as a tool to avoid potentially costly tax implications particularly on where the beneficial interest of a property truly lies.

Where divorce proceedings often cost in excess of £50,000, client should consider the options available to them and their partner to avoid extensive legal fees and often the acrimony that comes with these types of proceedings

There are three types of agreement to consider in dealing with parties entering into a relationship, depending on the circumstances. They do not apply to every couple.

1 Pre-nuptial Agreement

- 1.1 These are not now reserved for the multimillionaires but can apply to couples from all walks of life.
- 1.2 Typical pre-nuptial clients will general fall into one or more of the following categories:
 - 1.2.1 Have an interest in the family business, partnership or shareholding;
 - 1.2.2 Have existing dependents;
 - 1.2.3 Second marriages with pre-existing assets;
 - 1.2.4 Where one or both parties has introduced significant assets/contributions;
 - 1.2.5 There is inherited wealth;
 - 1.2.6 There is a significant disparity of asset base.
- 1.3 The Supreme Court in 2010 provided several requirements to ensure the enforceability of a pre-nuptial agreement, the most important consideration for SJP advisors being timing; the Court expects parties to execute any pre-nuptial agreement at least 28 days in advance to provide each party a 'cooling off period'.

Pre-nuptial & Cohabitation Agreements

To whom and when should they apply?

- 1.4 The Court will also expect financial disclosure to be exchanged and so each party should be prepared to provide the other with at least tabular disclosure of their financial position.
- 1.5 Do bear in mind that pre-nuptial agreement will need review upon the birth of children and neither party can relinquish their duty of financial provision to children by way of a pre-nuptial agreement.

2 Post-nuptial agreements

- 2.1 This generally takes the same format as a pre-nuptial agreement but should be considered in the event that there is a significant change in financial circumstances during the marriage, such as those outlined above at paragraph 1.2.

3 Cohabitation agreements

- 3.1 Whilst not technically a pre-nuptial agreement, a cohabitation agreement is something that should be considered upon a client's decision to live with their partner whilst remaining unmarried.
- 3.2 This is an increasingly common arrangement with public policy leaning towards people marrying slightly later and generally after they have already acquired assets in the sole name.
- 3.3 A cohabitation agreement can regulate the living arrangements for parties residing, unmarried, in a property owned in unequal shares as tenants in common or where both reside in a property owned solely by the other.
- 3.4 They generally protect the legal and beneficial interests of the solely owning party, or that of the majority owner.
- 3.5 The agreement can recite how contributions to outgoings are to be made and whether there are any circumstances in which such contributions are intended to give rise to a beneficial interest.
- 3.6 Litigation between unmarried couples is becoming increasingly common. The costs often far outweigh those incurred by divorcing couples and the law will scrutinise parties intentions in deciding whether to depart from the legal ownership of the property.
- 3.7 A cohabitation agreement could save your client significant sums of money in demonstrating the parties common intention at the start of the relationship and is well worth considering.

Prenuptial & Cohabitation Agreements

To whom and when should they apply?

Further information

For further information on this or on any other Family law matter you may have, please contact:



Gareth Schofield
Partner
0345 209 1125
gareth.schofield@clarkewillmott.com



Emma Gordon
Senior Associate
0345 209 1747
emma.gordon@clarkewillmott.com



Hannah Livesey
Associate
0345 209 1149
hannah.livesey@clarkewillmott.com



Sarah Marchant
Solicitor
0345 209 1065
sarah.marchant@clarkewillmott.com

Disclaimer: This briefing is intended to highlight issues only for the purposes of general interest and is not intended to be a comprehensive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content. Last updated: June 2015. Ref: 0

Clarke Willmott LLP is a limited liability partnership registered in England and Wales with registration number OC344818. It is authorised and regulated by the Solicitors Regulation Authority (SRA number 510689), whose rules can be found at <http://www.sra.org.uk/handbook/>. Its registered office and principal place of business is 138 Edmund Street, Birmingham, West Midlands, B3 2ES. Any reference to a 'partner' is to a member of Clarke Willmott LLP or an employee who is a lawyer with equivalent standing and qualifications and is not a reference to a partner in a partnership.