

Family Law Factsheets

Pre-marital agreements

When a pre-marital agreement is appropriate Take advice about a pre-marital agreement if:

- you already have substantial assets, or think you may acquire them; or
- you have already been married, and are taking property into the marriage that you want to keep separate for your own children; or
- there is an international aspect to the marriage, so that you want to protect assets against potential financial awards made against you in other countries; and
- your circumstances are unlikely to change - for example, you are unlikely to have any more children.

What they cover

Pre-marital agreements cover:

- how to divide assets like money, shares, pension, etc between you;
- what will happen to your home - who will be entitled to live where;
- any ongoing maintenance payments to be made to the other, and for how long;
- any maintenance for the children; or
- where there is an international aspect to the family (for example, you own homes in more than one country or you and your partner are of different nationalities), the country where the divorce proceedings will take place.

When it's effective

- Pre-marital agreements are not automatically enforced by the courts in England and Wales, but are increasingly influential when the court is deciding an appropriate financial award in divorce proceedings. You are likely to be better off with one than without one.
- Particular areas to look out for are:
 - it must have been made a reasonable time (preferably at least 21 days) before your marriage - if it was made immediately before, the court will be concerned that one of you might have put pressure on the other;
 - in all other respects it must have been made without either of you imposing any pressure or duress on the other;
 - each of you must have received independent legal advice. A court is unlikely to uphold a pre-marital agreement unless both spouses had independent legal advice on its effect;
 - each of you should give the other full and frank details of your financial circumstances; and
 - the terms of your contract should remain reasonably fair and within the parameters of the award that the court is likely to make.

Review

Check with your solicitor that your agreement is still valid:

- if there is a significant change in your circumstances, such as birth of children of the marriage, which might affect the award a court would make if you divorced; and
- from time to time - say annually - in any event, to make sure that the law (or its interpretation by the courts) has not changed

Other considerations

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- Marriage revokes any will you have made, so consider a new will when you marry.
- If either of you has been married before, your new marriage might affect your previous divorce settlement. Take advice.