

“To have and to hold”: prenuptials today

Remarriages later on in life, when you have already amassed your wealth, are on the increase. It is no surprise then that the use of prenuptial agreements is rising. The English legal system is catching up with the USA, where they have been recognised for years, and with Europe where they are gaining ever more significance in divorce settlements.

In some recent cases judges considered a prenuptial as a ‘very important’ piece of evidence in assisting the court in reaching a fair outcome and, when properly arrived at with the assistance of competent legal advice, should be upheld unless there are grounds for not doing so.

The UK government has considered the prospect of prenuptials becoming enforceable with safeguards limiting their enforcement in situations concerning children or where they have been signed less than 21 days before the wedding.

When reviewing a prenuptial agreement the courts will consider whether:

- The parties properly disclosed their finances
- They took legal advice on it
- Both parties signed it of their own free will
- The parties understand it
- It would be unjust if the prenuptial was upheld

Getting the legalities right

It is important each agreement is prepared professionally and that:

- You both provide a schedule of your finances
- You enter into it after consulting a solicitor
- You understand it. In this age of increased financial sophistication this is imperative as one cannot plead ignorance as a defence.
- It is comprehensive. For example that it covers the prospect of children and possible spousal maintenance is quantified depending on the duration of the marriage.

The more the prenuptial reflects the actual circumstances prevailing at the time of the marriage breakdown, the more weight the courts attach to it. Prenuptials are assuming a higher profile in settlements, as marriages nowadays are of a shorter duration where little may have changed from the date of the agreement.

Raising the delicate issue of a prenuptial agreement

The often held view that you quietly introduce a prenuptial just before the happy day is misguided since the circumstances in which it is signed may affect its validity. The ideal time would be a number of months before the wedding, with time to consider the prospect of a prenuptial, see a family lawyer and get it properly drafted.

The signed agreement can then be filed away leaving you to concentrate on the wedding arrangements as opposed to the bleak prospect of its fallibility, safe in the knowledge that such necessary precautions have been taken.

Divorce settlements: the stakes

- **Charman v Charman EWCA Civ 503**
Total assets between the parties £131 million.
Husband to pay wife £40 million, added to the £8 million she already had in her name.
The husband kept £83 million.
- **Miller v Miller [2005] EWCA Civ 984**
Short marriage of 2 years 9 months.
Husband's assets £17.5 million plus 200 000 shares in his company, New Star.
Wife had £100 000 of her own assets.
Judge awarded £5 million to wife, comprising the matrimonial home and a lump sum of £2.7 million

For more advice on prenuptial agreements, contact a member of the Family team.