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**PRENUPTIAL AGREEMENTS**

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A large percentage of marriages now end in divorce. It is becoming increasingly popular for couples to agree in advance of marriage what should happen in the event of a breakdown of their relationship. Prenuptial agreements can provide certainty and the means of protecting pre-marriage assets, inheritance, and existing family commitments . In a prenuptial agreement a couple set out their intentions in relation to any property, debts, income and other assets purchased together or acquired individually or that they have bought into a relationship.

Legally, once married all of these assets become marital assets and, unless specifically protected, are likely to be the subject of division in any financial proceedings. The primary purpose of a prenuptial agreement will be to limit the potential claims on the assets of one the couple by the other.

We have set out below some typical situations where a prenuptial agreement would be suitable:-

- Where one party wishes to get married and wants to protect their property in case the relationship does not work out. This is especially relevant where the person has a large amount of equity in the property or owns it outright.
- Where a person is considering marriage for the second time and wants to limit any potential claims on the settlement they received from their marriage if the relationship does not work out. This is especially relevant where there are children from the first marriage and the person wishes to “protect” their inheritance.
- Where either or both of the couple have assets, possibly quite significant in value and wish to avoid the costs of protracted and costly litigation should their relationship come to an end.

A prenuptial agreement is a document in which a couple set out their rights to any property, debts, income and other assets purchased together or acquired individually or that they have bought into their relationship in the event that the relationship ends.

If you have decided to marry please do not leave it until the last minute to consider a prenuptial agreement . They can be complex in nature and may take some time to perfect to both parties wishes. An agreement signed at the door of the church is less likely to be upheld by the court than one signed some time before the wedding.

Both parties must take independent legal advice. Without this there is a real risk that a court would not uphold the terms of the agreement at all. It avoids suggestion should the relationship fail, that one party misunderstood or was not aware of the nature and implications of the agreement. It also means that both parties can ensure that the party with the most to lose understands the nature and implications of the agreement they are about to sign.

It is imperative that full and frank disclosure of each party's respective financial positions is made prior to the agreement being prepared. Clearly for there to be any agreement in such matters both parties must put all their cards on the table.

At the planning stage you must consider and decide upon how you would like to deal with changes in circumstance that may arise during the marriage. For example, if you are thinking of having children, loss of employment, inheritances, pension provision, and the acquisition of further assets. It is important to provide (as far as possible) for what would happen in such circumstances.

We would also recommend putting in a provision for reviews of the agreement at agreed periods during the marriage. Couples need to be aware that the length of the marriage can have a bearing on whether or not the agreement remains enforceable and regular reviews of the provision can help with this.

At present a prenuptial agreement does not carry the same weight as a Court order and will not 'automatically' be upheld or enforced by an English or Welsh court in the event of a divorce and/or disagreement. The courts do however take them seriously, as a prenuptial agreement is evidence of your intentions to one another in the event of your relationship breakdown and one of the factors that a court may take into account when looking at all the circumstances of your case. The Court will carefully consider things like; did the party with the most to lose understand the nature of the prenuptial agreement; did he/she have independent legal advice before signing the agreement; did both parties provide full and frank financial disclosure.