

FAQS

-NUPTIAL AGREEMENTS-

Q: WHAT IS A NUPTIAL AGREEMENT? DIFFERENCE BETWEEN A PRE-NUPTIAL AGREEMENT AND A POST-NUPTIAL AGREEMENT?

A: A nuptial agreement is a written contract usually entered into before marriage (pre-nuptial agreement), it can also be entered after the marriage (post-nuptial agreement). A post-nuptial agreement is what is needed when the parties didn't enter into a pre-nuptial agreement before getting married. Normally, the parties have no intention of separating or getting a divorce when they enter into a nuptial agreement. A nuptial agreement sets out the ownership of the pre-marriage assets and determines how the parties' assets should be divided in the event of a divorce or separation and it also seeks to regulate their financial affairs during the relationship.

Q: WHAT IS A SEPARATION AGREEMENT?

A: Unlike nuptial agreements, a separation agreement is made at the end of a relationship when separation has become a reality. It sets out what the parties intend to happen to their assets, their agreement to live apart, arrangements for any child and other practical matters as a consequence of their current or planned separation. It should be noted that the agreement reached between the parties regarding their financial division is not legally binding and is not legally enforceable, i.e. a Court cannot enforce it if there are any issues or disputes later, therefore, even if an agreement can be reached between the parties, it is advisable to obtain a Consent Order to get a clean break between them.

Q: WHAT IS THE PURPOSE OF A NUPTIAL AGREEMENT?

A: The purpose of a nuptial agreement is to promote and encourage marriage rather than to facilitate its breakdown. That is because one of the main purposes of having such an agreement is so that the parties can reach an agreement in advance to record their respective and mutual intentions in the event of divorce on the basis of what each believes to be a fair outcome and avoid having to engage in litigation to resolve any financial claims they may have against one another.

Q: WHEN DO YOU RECOMMEND HAVING A NUPTIAL AGREEMENT?

A: Prenuptial agreements are generally recommended if 1) one party is much wealthier (substantially greater capital or income) than the other party, which could be because he/she has a much higher income; or 2) if one party want to retain and protect their pre-marriage assets, such as an inheritance from their family, or their family business; or 3) to define what is considered to be 'matrimonial property' or 'non-matrimonial property', for example in relation to business assets owned by one of you; 4) to protect assets/interests that were generated by their sole effort. It can also be beneficial in the case of a second marriage or if you have children from the previous marriage to protect assets for the purposes of inheritance planning.

Q: THE LEGAL STATUS OF NUPTIAL AGREEMENTS IN ENGLAND AND WALES

A: Generally speaking, nuptial agreements cannot override the Court's ability in deciding how your finances should be divided in a divorce. In a Supreme Court decision in 2010 (Radmacher v Granatino), the Court said, 'The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement'.

Q: HOW TO ENSURE THE NUPTIAL AGREEMENT IS ENTERED INTO IN THE RIGHT WAY?

A: The agreement must be freely entered into of each party's own free will, both parties must have a full appreciation of the implications of the agreement, and the terms of the agreement must be substantially fair. Before entering into such an agreement, the parties should each obtain independent legal advice. Both parties should also fully and frankly disclose their financial situations to each other, this includes listing out all the assets/properties they both own. Additionally, the agreement should seek to regulate pre-marital acquired assets, jointly acquired assets and interests of children etc. Also, if it is a pre-nuptial agreement, it should be finalized at least 28 days before the wedding, to give both parties enough time to consider the terms.

Q: WHAT CAN YOU INCLUDE IN A NUPTIAL AGREEMENT?

A: A nuptial agreement is a bespoke document tailored to cater for both parties' particular circumstances. You are able to include almost anything in the nuptial agreement, some examples of what you can include in the nuptial agreement are set out below: a) What will happen to the property that either of you brought into the marriage (i.e., pre-marriage asset); b) What will happen to the family home; c) What will happen to any property given to you or inherited during the marriage or any income or assets derived from trusts; d) What will happen to money held in joint accounts and any property purchased jointly etc. There are more provisions that are included in the nuptial agreement. Please consult us and we will be able to advise you based on your circumstances.

Q: HOW MUCH DO YOU CHARGE FOR A NUPTIAL AGREEMENT?

A: Our fees start from £1500+VAT for a simple nuptial agreement, we might charge more depending on the complexity of the terms.