



# Pre-nuptial agreements



## Background

Few people enter into a long-term commitment to someone else mindful of a future separation. Marriage, civil partnerships, moving in together or having children are big, positive steps to take with another person. Raising the subject of legal rights may not feel quite right, but it's something you should think about, particularly if there is a significant difference in your financial positions.

### Protecting yourself from the financial effects of a break-up

There are ways of protecting yourself from the financial effects of a break-up. Pre-nuptial agreements, pre-registration agreements and cohabitation agreements set out right from the start what should happen – especially about money and property – if your marriage or civil partnership ends, or if you are cohabiting and decide to separate. It is also possible to enter into post-nuptial agreements and cohabitation agreements, part way through your relationship if it feels to both of you that clarity would help you move forward together.

We're here to support you through the process. Our clients always come first; we focus on delivering first-class legal advice with exceptional levels of customer service.

## How TVE can help

TV Edwards was established in 1929 and enjoys a national reputation for delivering first-class legal services. Many of our lawyers are renowned legal experts; they train the profession, and they publish. Together our teams provide the legal support and expertise to help clients get resolution as quickly and inexpensively as possible.

## Our Expertise

Our team of family lawyers are experienced in all aspects of family law, from relationship breakdown to issues involving children, money, and property. We often help people in very complicated, difficult, and sensitive circumstances.



## Why is an agreement important?

An effective pre-nuptial agreement can set out prior to any separation how finances will be divided between a couple. The benefit of this is avoiding the emotional and financial cost that can come with a dispute over finances on separation.

When considering a financial claim on divorce the judge should consider all the relevant circumstances of the case in deciding how to divide the parties' finances, as well as the specific factors listed in the Matrimonial Causes Act. A pre-nuptial agreement is a relevant circumstance.

Whilst a pre-nuptial agreement cannot stop a spouse applying to the court for financial provision from the other spouse, a pre-nuptial agreement will have a substantial impact on the judge's decision in many cases. The court should give effect to a pre-nuptial agreement that is freely entered into by each party, in full appreciation of its implications, unless in the circumstances it would not be fair to hold the parties to their agreement.



## When is a pre-nuptial agreement not upheld?

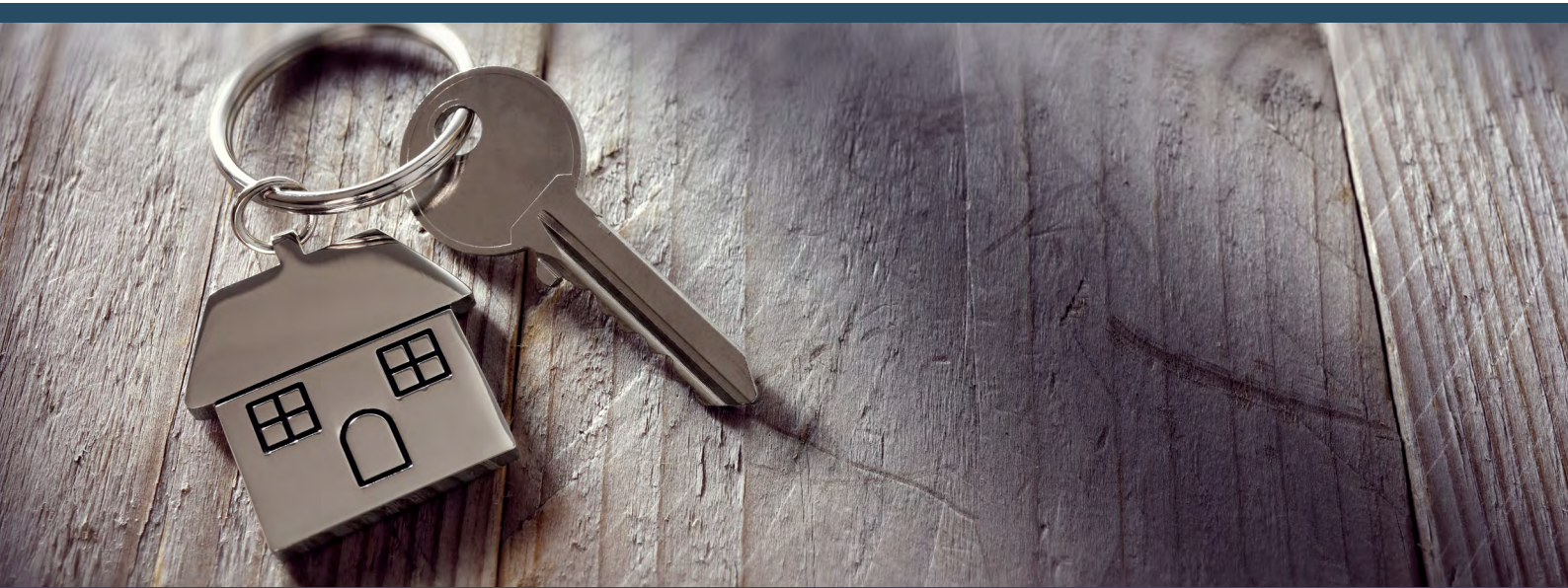
The agreement is unlikely to be upheld if the court finds evidence of mistake, duress, undue influence, misrepresentation or conduct such as exploiting a dominant position to secure an unfair advantage.

Both parties should feel that they are on an equal footing and freely able to negotiate the terms of the pre-nuptial agreement with one another. The court will take into account individual circumstances, such as the parties' emotional state at the time of making the agreement and factors such as age, maturity and wealth of life experience.

In fully understanding the implications it is important that both parties have received specialist family law advice before signing the agreement.

For a pre-nuptial agreement to stand the best possible chance of being upheld, it is necessary to provide for any children in the agreement and to consider whether this should be reviewed as the needs of any children change or if any children are born, adopted, or become part of the family.

Needs are decided by the amount a party needs to spend to maintain a standard of living not too dissimilar from that enjoyed during the marriage, where possible. If needs are adequately covered in the provision set out in a pre-nuptial agreement, then a prohibition on further sharing of the assets is more likely to be upheld.



## Matrimonial Property, Needs and Agreements.

In its report, the Law Commission recommended a change in the law to make pre-nuptial agreements binding if they meet certain criteria. This would, if adopted, reinforce the guidance already in place and prevent the court from making financial orders in ways that are inconsistent with the terms of an agreement unless a different order is needed to meet one of the parties' needs or for the benefit of the children. For a pre-nuptial agreement to be considered a qualifying nuptial agreement, and therefore be upheld, it would need to be:

- Contractually valid,
- Executed as a deed,
- Attach a "relevant statement" signed by both parties confirming their understanding,
- Financial disclosure must have taken place,
- Legal advice must have been obtained, and
- Neither the children nor either party's needs must be overlooked.

While there has been varying guidance, best practice is for a qualifying nuptial agreement to be signed more than 28 days before the marriage. It could be argued that signing an agreement within a given period is a form of undue pressure. To avoid this, it is sometimes advisable to sign a post nuptial agreement in addition, since it is much harder to argue there was any pressure upon either party if they have confirmed their agreement after the marriage.

## Contents of pre and post-nuptial agreements

Commonly, a pre or post-nuptial agreement sets out which party owns or will own certain assets on a future breakdown of the marriage. The agreement usually defines “matrimonial property” and “non-matrimonial property”.

Matrimonial property (or joint property) usually includes assets acquired during the marriage and assets held in joint names, such as the matrimonial home and joint bank accounts. Non-matrimonial property usually includes assets owned before the marriage, inherited assets and gifts received by one party during the marriage.



Pre and post nuptial agreements will stipulate what the parties have agreed in terms of the provision that will be made for the finally weaker party. This can include provisions for income, capital, and pensions.

Pre and post nuptial agreements can also deal with financial provision for children, but do not usually state arrangements for how the parties' children would spend time with them in the event that the marriage broke down.

A summary of the financial disclosure exchanged is usually annexed to a pre-nuptial agreement. This sets out the assets, income and all other relevant circumstances for both parties and provides the context within which the terms of the agreement have been negotiated and agreed. The extent of the disclosure required is a matter for discussion, the important point is that each party is satisfied by the disclosure they have seen, and that information requested has been provided. The less full or accurate the financial disclosure that is provided at the time the agreement is entered into, the less likely it is that a pre or post nuptial agreement will be upheld.



We provide a kind, empathetic, client-focused approach and deliver bespoke, pragmatic advice, meaning that we deliver exceptional levels of customer service.

Our large, handpicked team has a wide range of skills and experience across all aspects of family law that we use to bring clarity and resolution to your case.

Our advice is clear and independent and based on many years' experience of children, families and the law. If you are dealing with a difficult issue to do with marriage, cohabitation, children or any other family situation and need specialist family solicitors to advise you, we are here to help.



## Contact

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