



An Introduction to Nuptial Agreements

1. Pre-Nuptial Agreements

A pre-nuptial agreement is a legal agreement made between two individuals before their marriage has taken place. The agreement usually sets out how the couple wish their assets to be divided between them if they later separate or divorce. Some pre-nuptial agreements also detail how the couple currently arrange their finances and how they will arrange their finances during the marriage.

Individuals who are planning to become civil partners can also enter into a legal agreement before the registration of their civil partnership. These agreements are often referred to as **pre-civil partnership agreements** or **pre-registration agreements**. For the purposes of this practice note, reference to pre-nuptial agreements includes reference to pre-civil partnership agreements.

2. Post-Nuptial agreements

A post-nuptial agreement is a legal agreement made between individuals who are already married. The agreement usually sets out how the couple wish their assets to be divided between them if they later separate or divorce. Some post-nuptial agreements also detail how the couple currently arrange their finances and how this will continue or change during the marriage.

Civil partners can also enter into a post-nuptial agreement, usually referred to as a **post-civil partnership agreement** or a **post-registration agreement**. For the purposes of this guide, reference to post-nuptial agreements includes reference to post-civil partnership or post-registration agreements.

3. Differences between Pre-Nuptial agreements and Post-Nuptial Agreements

In the case of *Radmacher v Granatino* [2010] UKSC 42 the Supreme Court clarified that there is no difference in the legal status of pre-nuptial agreements and post-nuptial agreements.

4. Contents of Nuptial Agreements

Commonly, a 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**" or "joint property" and "separate 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 (or separate property) usually includes:

- Assets owned before the marriage.
- Inherited assets.
- Gifts received by one party during the marriage.

Nuptial agreements may also deal with income, such as treatment of earnings and future earnings and interests under trusts.

Nuptial agreements sometimes deal with financial provision for existing children, but do not usually attempt to deal with financial provision for any future children. Significant changes in circumstances during the marriage, including the birth of children, are usually dealt with by review of the terms of the agreement; often a review clause is inserted into the nuptial agreement setting out when a review of the agreement should take place. Nuptial agreements do not usually include non-financial arrangements relating to children.

5. Are Nuptial Agreements Binding?

Nuptial agreements are not binding. The parties to a nuptial agreement cannot override the court's broad discretion to decide how to redistribute their assets and income on an application for financial remedy. When considering an application for financial remedy, the court must, however, give appropriate weight to a nuptial agreement as a relevant circumstance of the case when considering the factors set out in [section 25](#) of the Matrimonial Causes Act 1973. It may be that a nuptial agreement should be given decisive weight. This will depend on the circumstances of the case.

6. Prerequisites for a Qualifying Nuptial Agreement

To be a qualifying nuptial agreement, an agreement must comply with the following criteria:

- It must be contractually valid (**the validity requirement**).
- It must be validly executed as a deed and contain a "relevant statement" (**the formation requirement**).
- It must not have been made within the 28 days immediately before the wedding or civil partnership ceremony (**the timing requirement**).
- Both parties to the agreement must have received disclosure of material information about the other party's situation when they entered into the agreement (**the disclosure requirement**).
- Both parties must have received legal advice at the time they entered into the agreement (**the advice requirement**).

If you would like to understand how your personal circumstances apply to the law, practical issues, your options for managing family change and planning for the future; please contact us by telephone to arrange an appointment or by email FamilyTeam@srb.co.uk.

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