

GOUGH'S

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In this month's "Ask Goughs" column we consider Pre-Nuptial and Pre-Civil Partnership Agreements in the light of the recent Radmacher case.

What is a Pre-Nuptial Agreement or Pre-Civil Partnership Agreement?

This is an agreement in writing entered into by a couple in advance of their marriage or civil partnership, tailored to their individual needs and circumstances. The agreement sets out what will happen to their finances in the event that the marriage or civil partnership does not work out and there is a divorce or dissolution.

Who needs one?

The couples who are most likely to benefit are those who already have assets prior to the marriage or civil partnership. For example when this is the second marriage and there is a need to safeguard their assets or future inheritance for the benefit of their children from a previous relationship.

Will it be binding?

There has always been some doubt as to whether or not a Pre-Nuptial Agreement is binding, but the recent case of Radmacher has been a major endorsement of Pre-Nuptial Agreements.

Provided the agreement is entered into voluntarily without undue pressure, with full disclosure of financial circumstances and sound legal advice, there is now a presumption that, subject to certain caveats set out by the Court, the agreements will be binding.

The Radmacher case brings England in line with the majority of European countries who uphold such agreements, as do many other countries of the world.

Is it worthwhile?

Whether or not it is worthwhile for an individual couple very much depends upon their individual circumstances. Agreements can provide peace of mind and help to avoid acrimonious contested Court proceedings.

If the couple's assets are modest then it may not be so appropriate to enter into a Pre-Nuptial or Pre-Civil Partnership Agreement. In these instances, even where the formalities have been observed, the Court is unlikely to rule that an agreement is binding if the observance of the agreement would not meet the basic needs of the financially weaker party and children of the family.

How do I go about obtaining one?

Firstly you should consider what is needed for both of you and agree in advance what might be included in the document. You should then make an appointment with a specialist Family Solicitor to discuss what you wish to agree to and whether or not it is appropriate in your circumstances.

There are a number of formalities which need to be observed in order to make the agreement as fail safe as possible.

The process should start well in advance of the marriage or civil partnership and must be entered into voluntarily, without undue pressure and both parties must be fully informed of the implications of the agreement.

The parties will need to disclose to each other their full financial circumstances and they must also have sound, independent legal advice.

For more information about Pre-Nuptial or Pre-Civil Partnership Agreements please contact Matthew Drew, Head of Family Department on 01249 712193 or email matthewdrew@goughs.co.uk

This article does not constitute legal advice and no action can be taken as a result of reading it. A qualified lawyer should always be consulted before taking legal action.

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