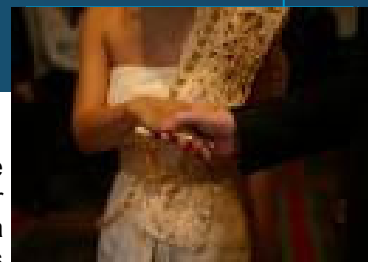


PRE NUPTIAL SETTLEMENTS

Don't do a McCartney—do a prenup



There was a time when agreements made between couples before they married that tried to influence the way a Court would divide the assets should they divorce carried little weight. Recent case law suggests that such agreements will be recognised in certain circumstances and that England is catching up with many parts of the western world where prenuptial agreements have been fully binding for years.

So how can Leeds Day help?

The Courts have been careful to impose a number of important safeguards to ensure fairness to each spouse or civil partner and so pre nuptial agreements must be carefully drafted and managed to ensure that every legal requirement and safeguard is met. Simply doing a “DIY prenup” without specialist legal input will put your assets and future earnings at risk in the event of a Divorce. It is also important to bear in mind that even if a prenuptial agreement has been carefully prepared with the help of legal advisers, the Court will still have the final say and if there are any children born during the marriage their needs must be addressed before the terms of a prenuptial agreement are considered.

The Court has set down a list of pre requisites when couples are thinking of drawing up a prenuptial agreement. These are as follows:

- Did the person with most to lose understand the agreement?
- Did s/he have independent legal advice?
- Was s/he under pressure to sign?
- Was there full financial disclosure before the agreement was signed?
- Would an injustice be done if the agreement were upheld?

Why should I bother with a pre nup?

There have been two well publicised cases which make it more important for couples who are thinking of marrying, to consider entering into a prenuptial agreement. Although Parliament has not formerly rubber stamped prenuptial agreements, they are extremely persuasive when the Court is dealing with a short marriage and there are no children. It is also likely to hold significant weight for those couples entering into second marriages who want to protect assets for children of their first marriages.

In the case of Miller, the Court had to decide whether Mrs Miller should receive a share of her husband's wealth

even though it was only a short marriage of just two years and nine months. The House of Lords decided that Mrs Miller should receive £5 million (made up of a property in London worth £2.3 million and a payment of £2.7 million). The reason given was that she had a legitimate expectation that the standard of living she had during the marriage would last for her entire life.

In the case of McFarlane, the Court awarded Mrs McFarlane a significant share of her husband's future income as compensation to her for having stayed at home to care for children whilst her husband pursued his career. In other words, the Court decided that no distinction should be made between the wife staying at home and the husband going to work. By choosing to stay at home Mrs. MacFarlane's individual finances suffered and once her marriage had broken down and she no longer shared a family income with her husband she was entitled to compensation.

Neither the Millers nor McFarlanes had prenuptial agreements. In Miller, had there been a prenuptial agreement this could have made a big difference to Mr Miller as it may have enabled him to ring fence his assets which he earned before the marriage to prevent Mrs Miller from claiming a share if the marriage broke down. There is building pressure from lawyers for a change in the law to allow properly negotiated prenuptial Agreements to become legally enforceable. The McFarlane case also opens the door for those who have already divorced with a provision for maintenance sometimes for just 5p a year) to ask the Court to consider whether this should be increased to a more meaningful sum.

If nothing else, a prenuptial agreement allows couples a degree of self regulation over their financial affairs without having to involve the Courts should the marriage breakdown.

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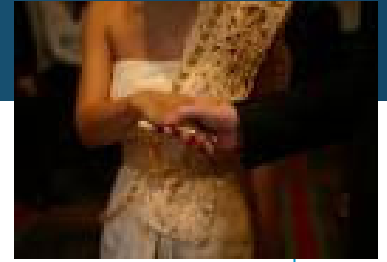
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This can be of great value in avoiding the need for expensive, protracted and potentially unpleasant disputes, since both parties will know where they stand financially should they decide to separate. This is especially important where one person has brought substantial wealth into the marriage as in the case of Miller above although the agreement must ensure fairness if the parties expect a Court to enforce their private financial arrangements.

If you are not married but you are thinking about living with your partner or getting married in the near future why not call one of our family team to see if we can help in drawing up a prenuptial or a living together agreement.

If you think these cases might affect you, why don't you call one of our Family Team to see if we can help on 01480 454301.

Contacts

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