

For Better for Worse or for Pre-nuptial?

Pre-nuptials are certainly getting a lot of press at the moment. Apparently since the reporting of a recent high profile case in the media, solicitors are being asked to prepare more of these pre-marriage agreements than ever before. However, is it worth it?

In the recent case of Radmacher and Granatino, there had been a pre-nuptial agreement, which was given evidential weight by the court. "Sexed up" reporting of the case has been heralded as a major indication that these types of agreement will become more binding, and even "decisive" in divorce settlements in the future.

The Present Law

The overall legal position with financial settlement on divorce, is that the District Judge has an extremely wide discretion to deal with whatever assets there are of the marriage. There is however a check-list which provides guidance for the parties and the Judge as to what issues and circumstances should be taken into account. This is set out in section 25 of the Matrimonial Causes Act 1973. Traditionally the Courts have viewed pre-nuptial agreements as an attempt to circumvent the law and pre judge issues that should be open to the Judge's discretion to decide. In Granatino, Lord Justice Thorpe said that it had become increasingly unrealistic to regard pre-nuptials as void. However there is a deal of difference between "void" and "decisive"; thousands of pounds worth of legal fees of difference.

The Way Things are Going

There are several countries where pre-nuptial agreements are treated as binding, and this is attractive to a government interested in cutting the costs of court services. There is also a push from other interest groups in the UK to recognise these agreements in the UK in a more effective way.

When is it worth Making a Pre-nuptial ?

In certain cases it makes sense to try and have a plan for what will happen if things go wrong. Many "love struck" couples at the outset of a relationship find this a difficult topic to talk about. However, certainly for those involved in business together and for those, who have assets from a previous relationship, and want those assets to go to the children of that relationship, it makes a great deal of sense to consider entering into an pre/post nuptial-agreement.

Business is Business

Most people would not consider going into business without having a plan for the business, or indeed having applied some thought to what will happen if the business relationships breakdown. This would usually be dealt with in a partnership deed or a shareholders agreement. But what if your business partner is also your spouse? Just because this is the case does not mean that the tricky issue of what will happen if things go wrong should be ignored. Thinking the unthinkable and preparing for the worst could be a way of saving a lot of stress, and undoubtedly a lot of legal costs in the long run.

There is Still a Risk

Until there is a change in the law no lawyer can guarantee that a pre-nuptial agreement is enforceable. It is simply something which the Court will take into account. How much relevance it has will depend on exactly how much relevance it has. So if the agreement has been made following a full exchange of all relevant information and both parties have been properly legally advised and given sufficient time to consider everything carefully with no pressure or coercion then the more chance there is that the court will give it weight.

Relevance and Review

Pre-nuptial agreements need to be kept under review, and this too will be relevant to the issue of how much notice the court will take of what has been agreed. So it makes sense to keep reviewing the terms of the agreement especially if there are changes in circumstances. Pre-nuptials should be converted into post-nuptial agreements, and again there is evidence to show that the courts will take more notice of a recently made or reviewed post nuptial agreement, if the circumstances in which it was made are still pertaining at the time of the divorce.

Cullimore Dutton's Solution Based Approach.

Forward thinking legal practices like Cullimore Dutton are adapting their services to be more relevant to the needs of clients both in terms of business and commercial needs and also on a more personal level. Rather than concentrating on picking up the pieces after things have gone wrong, and wrangling over what is left we can provide a more constructive service to help clients prepare for the future.

- By advising couples who are in business or going into business together with regard to shareholder agreement, partnership deeds and pre/post-nuptial agreements to cover as many eventualities as possible.
- By advising those entering into second marriages as to how to provide some level of security that their family assets can be preserved for their children from the previous relationship both in the event of relationship breakdown and on death.

Collaborative Law

By preparing for the worst at a time when relationships are at their best a great deal of the stress and bitterness which may or may not come later can be averted. There is no need for the negotiations in respect of these agreements to be done in an adversarial way. Whilst it is still going to be essential for the individuals to be separately represented the discussion can be dealt with in a collaborative way with the parties and their lawyers sitting together and working together to find the most creative and practical ways to solve the issues arising.

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