

Palmerslaw

Guide to pre- and post-nuptial agreements

Moving forward
together >



While nobody sets out on a marriage or civil partnership anticipating or expecting that the relationship will break down, it is a sensible step to think about how your financial position would be affected if it did so.

When considering the financial matters on divorce or dissolution of a civil partnership, the starting point for the court for division of assets accumulated during a long relationship – including assets brought into the marriage or civil partnership – is typically an equal division. The court will then look to see if there are reasons to depart from an equal division in that particular case e.g. where there is a difference in income or earning capacity.

This has a particular significance for increasing numbers of people. Many are marrying or entering a civil partnership later in life – the average age for a first marriage in England and Wales is now 36 for men and 33 for women. Such couples are more likely to have accumulated assets prior to the marriage or civil partnership while those marrying for a second time are likely to want to protect any settlement received from the first marriage.

If there are children from a previous marriage or relationship, their parent may well want to ensure that any money or property that they have at the time of the marriage is preserved for those children, rather than going to their new partner.

Pre-nuptial and post-nuptial agreements are an increasingly popular option for protecting assets and income within a marriage or civil partnership and this guide covers some of the key points relating to these agreements.

However, please note that this is for general guidance only and you should always seek professional advice tailored to your own circumstances before entering into any arrangements.

Pre-nuptial and post-nuptial agreements: the basics

A pre-partnership agreement in civil partnerships or pre-nuptial agreement in a marriage is an agreement between the two partners, before they formalise the relationship, designed to set out financial arrangements and protect their separate property in the event of a permanent separation.

Where a couple has entered a civil partnership or marriage without an agreement, they can put in place a post-partnership or post-nuptial agreement to establish financial and other arrangements in the event of a dissolution or divorce.

Such agreements are not currently legally binding in the UK but were given legal weight in certain circumstances by the Supreme Court ruling in the case of *Radmacher v Granatino* in October 2010.

In February 2014, the Law Commission recommended that the government should put in place legislation to introduce what it calls “qualifying nuptial agreements”.

The Law Commission recommends that these nuptial agreements – including those made before or after a marriage or civil partnership or in contemplation of separation – should be enforceable contracts, not subject to the scrutiny of the courts, which would enable couples to make binding arrangements about the financial consequences of divorce or dissolution as is the case in many other countries

With this favourable view of such agreements, more and more couples are likely to consider putting them in place.

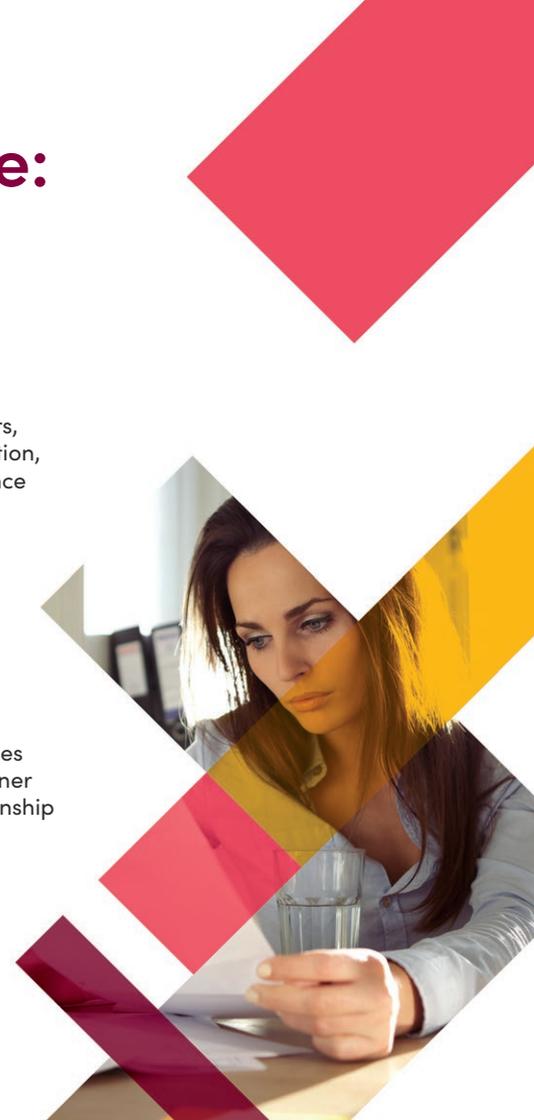
Putting an agreement in place: issues to consider

The decision to put in place a pre-nuptial or post-nuptial agreement is one that requires careful consideration.

Every couple is different and for some such an agreement would be unthinkable. For others, it would be a pragmatic piece of forward planning that could make the process of separation, divorce or dissolution easier in the future, by establishing financial arrangements in advance and removing potential areas of disagreement or conflict.

In making the decision, some points to bear in mind are:

- both partners should take independent legal advice (and, if necessary, accountancy advice) before entering into an agreement. This protects both partners against any future claim that they were pressurised into entering such an agreement
- allow plenty of time for the drawing up of an agreement – the recommended minimum is 28 days before a wedding or civil partnership ceremony
- both parties must be prepared to fully disclose all their assets and financial circumstances
- the agreement should make it clear what happens to the assets belonging to each partner before the civil partnership or marriage, as well as those accumulated during the relationship
- it should cover what will happen to the couple's home, in terms of who lives there and the division of proceeds if it has to be sold
- it should also contain review clauses, for example, on the birth of a child or in case of an inheritance.



Protecting parents' interests

At a time of high property prices, there is an increasing trend for parents to make financial contributions to a first home for their children or, perhaps at a later stage, to buy a larger property jointly with a son or daughter and their spouse and share it with them.

If the parent views the money as an investment, or wishes to recover it if relationships break down, this should be recorded in a legally binding document. This will help prevent potentially costly disputes on divorce as to whether the money was intended as a gift.

If the money was provided as a gift to the child, it is likely to form part of the marital pot of assets taken into account in a subsequent divorce or dissolution. In these circumstances, a pre- or post-nuptial agreement can be used to protect the recipient's interests.



Contact us

To find out more about how we can help you, please contact our family law specialists:



Eleasha Mirza

Paralegal
Basildon & Thurrock

☎ 01268 240000
✉ EleashaMirza@palmerslaw.co.uk



Farah Mahfooz

Solicitor
Basildon

☎ 01268 240000
✉ FarahMahfooz@palmerslaw.co.uk



Karen Bishop

Head of Family Department
South Woodham Ferrers

☎ 01245 322111
✉ KarenBishop@palmerslaw.co.uk



Leanne Livingstone

Executive
Thurrock

☎ 01375 484444
✉ LeanneLivingstone@palmerslaw.co.uk



Rumi Begum

Solicitor
Thurrock

☎ 01375 484444
✉ RumiBegum@palmerslaw.co.uk



Sarah Dowie

Senior Associate
Rayleigh

☎ 01268 988488
✉ SarahDowie@palmerslaw.co.uk



Venessa Appiah-Nuamah

Solicitor
Rayleigh

☎ 01268 988488
✉ VenessaAN@palmerslaw.co.uk

Palmerslaw

Basildon

19 Town Square,
Basildon,
Essex, SS14 1BD

☎ 01268 240000

Rayleigh

105 High Street,
Rayleigh,
Essex, SS6 7QA

☎ 01268 988488

South Woodham Ferrers

Prospect House, 1/3 Brickfields Road,
South Woodham Ferrers,
Chelmsford, Essex, CM3 5XB

☎ 01245 322111

Thurrock

Ascension Chambers,
Fleming Road, Chafford Hundred,
Grays, Essex, RM16 6HH

☎ 01375 484444

Commercial Hub

Suite 1A, Phoenix House,
Christopher Martin Road,
Basildon, Essex, SS14 3EZ

☎ 01268 240000

www.palmerslaw.co.uk enquiries@palmerslaw.co.uk



Palmers Solicitors is the trading name of Palmers Law Limited (company registration England & Wales: 09464224) registered office 19 Town Square, Basildon, Essex SS14 1BD and is authorised & regulated by the Solicitors Regulation Authority, SRA No. 813805

This guide is not intended to be an exhaustive statement of the law and gives general information only. You should not rely on it as legal advice. We do not accept liability to anyone who does rely on its contents. This guide was correct at time of publication (September 2021) and is not a substitute for legal advice.

