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“PRE-NUPS” - A GOOD IDEA?

A “pre-nup” as they are commonly referred to, is an agreement entered into prior to marriage, which sets out how a couple would want their assets to be divided in the event of divorce.

Contrary to popular belief, pre-nuptial agreements are not just favoured by the “rich and famous”. More and more people are considering pre-nuptial agreements as a way of protecting the wealth that they have acquired before marriage. Anyone marrying later in life may already have accumulated considerable asset prior to their marriage, which they would want to preserve. Older couples may want to ensure that any inheritance they leave goes to children from a previous relationship rather than “the new wife”. Those entering into a second marriage may just have the “once bitten, twice shy” attitude and individuals may be entitled to “family wealth” which the family itself may want to protect from an “outsider”.

Unlike many other countries, pre-nuptial agreements are still not legally binding in England and Wales. However a recent case has led to a shift in the law. For the first time an English Court has upheld a pre-nuptial agreement in a divorce case. Whilst this has not directly led to pre-nuptial agreements being enforceable in England it has now changed the way that a Court will treat a pre-nuptial agreement within divorce proceedings. Now, there is a presumption that the pre-nuptial agreement should be upheld unless it is simply manifestly unfair.

So, a pre-nuptial agreement may be a good idea for those coming into marriage with far more wealth than the other but may not be suitable for everyone. The existence of a pre-nup could actually leave the financially weaker party worse off in the event of a divorce. They may actually find that they could receive a far more favourable settlement if they left it to the court to decide on divorce. For more info please call Joyti Henchie on 020 8508 2111 or email Joyti.henchie@attwaters.co.uk



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