

## **ARE PRE-NUPTIAL AGREEMENTS WORTH THE PAPER THEY ARE WRITTEN ON?**

The short answer is YES they are. They are particularly beneficial for those wanting to protect pre-marriage acquired assets or businesses or wealth expected in the future (inheritances) on first or subsequent marriages. They are not just for the rich and famous

Whilst they are still not legally binding in England and Wales the recent decision of the Supreme Court in *Radmacher v Granatino* was an authoritative step towards that eventuality. There is now a rebuttable presumption that a Pre-Nup will be binding and the courts will give effect to it if it was freely entered into by the parties with full appreciation of its implications unless circumstances at the time would render it unfair to hold the parties to the agreement.

However, no matter how well a Pre-Nup is drafted it is not possible for two parties to oust the jurisdiction of the courts. It is ultimately for the courts, applying section 25 of the Matrimonial Courts Act 1973 and principles established in case law, to decide you get what on divorce. The courts overriding objective is fairness. The court therefore remains the protectorate of the weak and vulnerable.

What Pre-Nups are what can be described as tools of damage limitation. Provided the terms of a Pre-Nup is “fair”, and this is indefinite and subjective, they can provide for a leaner award than the court may order, not to mention less expensive and distressing than the traditional court process.

To ensure your Pre-Nup has the best possible chance of being given effect to by the courts the terms need to be “fair”. The agreement cannot be allowed to prejudice the reasonable requirements of the children of the family or fail to meet a party's needs or to compensate (especially when there are children). The Supreme Court seems to suggest a leaner definition of “needs” should be applied that the one adopted by the courts where no Pre-Nup exists. It is also a good idea to factor in circumstances or events that may trigger an automatic review of the terms of the Pre-Nup.

The court will look into the circumstances surrounding the signing of the Pre-Nup and this may affect the weight the court gives to the agreement. For instance, whether there was any duress, fraud or misrepresentation, whether there was undue pressure or exploitation of a dominant position, lack of legal advice or full disclosure (although this may have no effect if the parties were fully aware of the implications and were indifferent to detailed disclosure), the age, maturity and experience in relationships.

If you would like more information then please call me on 0113 2390088 or email me at [sarah@nortonconnor.co.uk](mailto:sarah@nortonconnor.co.uk)