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Will My Prenuptial Agreement Be Valid In Court?

If you are facing difficulties in your marriage and you have a prenuptial agreement, you may be curious to know just how binding the terms will be, especially if your life is now rather different to the one you envisaged when you planned to get married.

One of the main reasons people enter a prenuptial agreement is to protect wealth from outside the marriage, such as a business or an inheritance. It can be helpful to obtain certainty in regard to the financial position should the marriage come to an end.

Sometimes other events can cause you to question whether the agreement is still appropriate. For example, if you are entering a new business partnership, a divorce could have a significant impact on you and any business partners, and you may wish to guard against this risk.

It is important that anyone contemplating a divorce or who has concerns about an agreement has a lawyer examine their prenuptial agreement.

Will the family court uphold my prenuptial agreement?

In England and Wales, there is no law specifying that a prenuptial agreement is legally binding. However, after a landmark decision in 2010, the courts decided that they would give weight to prenuptial agreements under certain circumstances when they are determining the outcome of the financial division of assets between spouses during divorce. This provides some reassurance that, if done correctly, an agreement is likely to be upheld in court.

Is my agreement valid?

One of our specialist [family lawyers](#) can examine your prenuptial agreement and discuss with you the circumstances surrounding when the agreement was signed.

There are a number of factors which could be detrimental to the agreement being upheld, namely:

- If the agreement was entered too close to the wedding day, it is expected that the agreement should be signed at least three weeks before the big day – any closer and you run the risk that the court will think it was unfair.
- If either you and/or your former spouse allege that you were put under duress to sign the agreement.
- If either you or your former spouse did not make a full and frank disclosure of all assets and liabilities in your name, or that you hold jointly with any other person.
- If the agreement was not in writing and independently witnessed.
- If you and/or your spouse did not obtain independent legal advice on your entitlements.

What if I am no longer happy with my prenuptial agreement?

People's lives will change throughout their marriage, and no one can predict at the outset what curve balls you may be thrown. Sometimes a prenuptial agreement entered many years ago may no longer be an agreement you are content with or one that allows for changing family circumstances which impact your previous plans.

For example, if one of you:

- had to give up your career to look after your children;
- had to give up work to care for a disabled relative;
- suffered serious ill health; or
- has started a new business partnership or venture.

If you find yourself in this boat, it is useful to know that you do have options.

Can I renegotiate our prenuptial agreement?

Renegotiating an existing prenuptial agreement could be sufficient to alleviate any tensions between you and your spouse and allow your marriage to repair. It can also provide confidence and security going forward after a change in family circumstances.

You can renegotiate the terms of your prenuptial agreement during the course of your marriage. To do this, you will both be required to engage separate legal representatives and make a full and frank disclosure of your assets.

It also has to be borne in mind that a prenuptial agreement is a deed and by its own nature, deeds can be varied if they are drafted adequately. A discussion should also take place with your legal advisor regarding the potential of evolving your existing prenuptial agreement to a postnuptial agreement.

Can I apply to the court to disregard the prenuptial agreement?

When you divorce, you can apply to the court for them to consider your finances if you cannot agree with your spouse on the terms of the settlement.

The court will first determine if the prenuptial agreement should be binding. In determining this they will consider the terms of the agreement and the circumstances surrounding when it was signed.

If upholding your prenuptial agreement would be unfair due to unforeseen changes in your family life from the time it was entered, then your lawyer can mount a challenge in court regarding the enforceability of the agreement.

If the court is not satisfied that the agreement should be upheld, then it will make the financial orders it deems appropriate considering your family and financial circumstances.

How can we help?

If you are contemplating divorce, or simply want to have your prenuptial agreement reviewed, it is best to obtain early legal advice to understand your options. If you want to speak to one of our specialist [family lawyers](#) at Lester Aldridge please call 01202 786161 or email online.enquiries@LA-law.com.