

# Briefing Note: Pre and Post Nuptial Agreements – Frequently Asked Questions

## Introduction

This guide sets out the broad principles applicable to pre-nuptial and post-nuptial agreements, highlighting key areas and placing the various issues arising into a legal context. It serves as a general introduction. For specific advice tailored to your own circumstances you should consult a specialist family solicitor.

## 1. What are pre-nuptial and post-nuptial agreements?

These are, essentially, contracts made between couples who intend to marry (pre-nuptial agreements) or who have married (post-nuptial agreements) which deal with the arrangements that they would like to have made to resolve financial issues between them if the marriage should break down.

## 2. Are these agreements enforceable?

The agreements are not absolutely binding in England and Wales. The Court is the ultimate arbiter of what can be ordered in the event of a Divorce.

However, a Supreme Court ruling has said that “the Court should give effect to a nuptial agreement that is fully entered into by each party, with full appreciation of its implications, unless, in the circumstances prevailing, it would not be fair to hold the parties to the agreement”.

In the case of post-nuptial agreements there is an even stronger presumption that these can be relied upon, because there is no need for either party to enter into such an agreement.

## 3. When should a pre-nuptial agreement be entered into?

A pre-nuptial agreement should be concluded not less than 28 days before the marriage. Ideally, we recommend that it should be dealt with further ahead than that so that is not something that has to be thought about in the days leading up to the wedding.

## 4. Are there any other requirements for a pre or post-nuptial agreement to be entered into?

As with all contracts, neither party should be subject to duress, or undue influence. There must be no mistake (in law). These sort of issues can render the contract void.

To make it more likely that the agreement will “stick” it is recommended that:-

1. Each of the parties should receive independent legal advice.
2. There should be full disclosure of assets and property before the agreement is made.

## 5. Why have a pre-nuptial or post-nuptial agreement?

It may be that one of the couple already has significant wealth, perhaps received from parents, or from a previous marriage which he/she wishes to retain intact in the event of a breakdown in the relationship. On the other hand, it may be that an inheritance is anticipated in the future.

### Briefing Note

#### Summary:

A general introduction to pre and post nuptial agreements, including frequently asked questions.

Author: Giles Robinson

#### For detailed advice on family matters please contact:

David Young  
Partner  
01424 735000  
[dgy@gabyhardwicke.co.uk](mailto:dgy@gabyhardwicke.co.uk)

Giles Robinson  
Partner  
01323 435960  
[gnr@gabyhardwicke.co.uk](mailto:gnr@gabyhardwicke.co.uk)

Debra Frazer  
Partner  
01424 457500  
[df@gabyhardwicke.co.uk](mailto:df@gabyhardwicke.co.uk)

## Briefing Note: Pre and Post Nuptial Agreements – Frequently Asked Questions

These agreements can also be important where either, or both, of the couple have children from a previous relationship, so as to ensure that their interests are properly protected.

### 6. Isn't a pre-nuptial or post-nuptial agreement unromantic?

Whilst it may be a difficult discussion to have, marriage is a significant step to take, and the implications in the event of a breakdown in the relationship can be significant (see factsheet regarding financial matters).

Every car driver takes out car insurance, but does not do so with the intention of crashing the car.

This is a document that is sensible, practical and, reflects the agreements couples reach. Hopefully, once made, it can be tucked away in a drawer and forgotten about. It is then available if the worst happens.

If circumstances do change throughout a relationship, it is possible to reflect that change by varying the terms of the agreement or preparing a new agreement.

### 7. Should I make a new Will?

In this country, any marriage revokes a Will. Consequently, a new Will should be made once married or be made in contemplation of marriage.

### 8. What about my house?

Even if one spouse's name is not on the title to the property he/she lives in with the owner then the non-owner will acquire a right of occupation in it whilst married.

If you would like to know more about this topic or our other legal services, please contact:

**Gaby Hardwicke**  
33 The Avenue  
Eastbourne  
East Sussex  
BN21 3YD

Tel: 01323 435960  
Fax: 01323 435946  
[gnr@gabyhardwicke.co.uk](mailto:gnr@gabyhardwicke.co.uk)  
[www.gabyhardwicke.co.uk](http://www.gabyhardwicke.co.uk)

**Gaby Hardwicke**  
3 Endwell Road  
Bexhill on Sea  
East Sussex  
TN40 1EA

Telephone: 01424 735000  
Fax: 01424 222702  
[dgy@gabyhardwicke.co.uk](mailto:dgy@gabyhardwicke.co.uk)  
[www.gabyhardwicke.co.uk](http://www.gabyhardwicke.co.uk)

**Gaby Hardwicke**  
34 Wellington Square  
Hastings  
East Sussex  
TN34 1PN

Telephone: 01424 457500  
Fax: 01424 457534  
[df@gabyhardwicke.co.uk](mailto:df@gabyhardwicke.co.uk)  
[www.gabyhardwicke.co.uk](http://www.gabyhardwicke.co.uk)