

## Post-Nuptial Agreement Factsheet



### **What is a Post-Nuptial Agreement?**

A Post-Nuptial Agreement is a contract that is drawn up after marriage or a couple have formed a civil partnership. The Agreement provides details on how the couple's assets and property are to be split in the event of the couple divorcing, separating or upon death.

A Post-Nuptial Agreement is similar to a Pre-Nuptial Agreement except that it is made after the marriage or civil partnership has taken place.

### **Are Post-Nuptial Agreements Legally Binding?**

The Privy Council considered the status and effect of post-nuptial agreements in 2008 in the case *MacLeod v MacLeod*. The Supreme Court has endorsed the decision of the Privy Council such that parties who have entered into a post-nuptial agreement should be entitled to enforce that agreement upon separation, subject to the court's power of variation.

### **What to consider**

Before entering into a Post-Nuptial Agreement it is a good idea to discuss the matter, in depth with your spouse

or partner. You will need to agree on how you will split your assets and debts and take into consideration any future income or assets. If you can agree on these matters it will make the whole process of obtaining a Post-Nuptial Agreement much easier.

Once the Post-Nuptial Agreement is in place you can still change and update the terms as your circumstances dictate.

### **What should a Post-Nuptial Agreement include?**

A typical Post-Nuptial Agreement would include the following details:

- Assets and debts
- Payment of any outstanding debts
- Income and expectations of any gifts and / or inheritances
- Any future income or gains including property
- A list of personally and jointly owned belongings.
- What will be covered in your Will in the event of your death?
- How much maintenance will be paid to your ex-partner?
- How any property will be split, this would include second homes etc.
- Insurance coverage including, life medical and disability

It is important that both parties obtain independent legal advice from a solicitor. Normally both parties will need to instruct different firms of solicitors to avoid any conflict of interest.

The court will have to be sure that both parties entered into the agreement freely and with a full understanding of the implications of doing so. However, a court may not consider a post-nuptial agreement when:

- One party is under excessive pressure
- There is an absence of full financial disclosure
- It would be grossly unfair given the contribution made by a spouse or partner
- One party entered into the agreement without proper independent legal advice

**For more information please contact one of our Family Lawyers:**



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