

Private Client eNews – 15 November 2007

Look Before You Leap

A pre-marital agreement is a formal written agreement entered into by a couple before marriage. The purpose of such an agreement is to record the parties' intentions as to the division of assets in the event that the marriage breaks down.

Currently, the courts are not obliged to enforce these although recent case law suggests a move to an acceptance of them. Originally, it was seen that acknowledging such agreements would undermine the sanctity of marriage.

The current law gives the court a wide discretion in deciding the division of assets on divorce and the Judge is obliged to take into account a list of factors in order to come to a decision. Recent case law shows that the courts are now considering pre-marital agreements as one of the relevant factors in relation to the division of a couple's assets.

The weight that the court attaches to the terms of the pre-marital agreement depends on whether, at the time of the agreement, the couple had:

1. Independent legal advice
2. Full and frank disclosure of assets
3. No undue pressure

It is the court's over-riding duty to attempt to arrive at a solution that is fair in all the circumstances, applying all of the standard factors and if this means, considering and often following, the terms of a pre-marital agreement then it seems that the court will do so.

Essentially, although pre-marital agreements are not yet binding in England and Wales, more and more are used by couples entering into marriage and courts are more frequently taking these agreements into account. In the current climate, if a couple have assets they wish to protect we would recommend they enter into such an agreement in order to safeguard these should their relationship later break down.

Slavica Stricevic is Head of the Family Department. She deals with cohabitation and pre-marital agreements as well as divorce, separation, dissolution and the distribution of assets, particularly cases which involve complex issues and assets of high value. She offers an initial consultation at £300 plus VAT.

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