

## Pre-nuptial agreements and ring-fencing wealth

### Case-study – Peter and Jane

Jane is engaged to be married to Peter. Peter was previously married to Polly, but the marriage sadly broke down. He continues to pay maintenance to his wife and to support his children.

Jane is a management consultant, and has built up substantial savings and investments from her income. In addition, her elderly grandfather is terminally ill and she expects to inherit his estate of around £1 million in the near future. Jane is understandably concerned about what would happen in the event that her marriage to Peter broke down, and about Peter claiming a share of her inheritance, or of the investments and savings she has built up through years of hard work.

What can Jane do to protect her position in the event of a breakdown of her marriage to Peter?

### **Resolving the finances on divorce**

- In deciding how to separate the finances on divorce, a judge will take into account all the financial resources and income of each spouse. This includes wealth built up before the marriage, business interests, pensions and inheritances.
- The aim (in general terms) is to meet each spouse's housing and income needs, and the judge has wide powers to redistribute wealth to meet those needs.
- The length of the marriage is important, as are the contributions to the marriage that each spouse has made.
- 'Pre-owned' wealth (such as Jane's in the case-study above) is a contribution to the marriage. If Jane receives the inheritance from her grandfather, this will be another contribution to the marriage on her part. Each of these contributions will be taken into account in determining the financial settlement should Peter and Jane divorce.

### **Ring-fencing wealth**

- Jane can 'ring-fence' her pre-owned funds, and any inherited wealth, so that these assets can be easily traced and identified. She can do so by keeping them separate from Peter's assets, and from any wealth which may be built up during the marriage.
- The assets should be kept in Jane's sole name, and invested separately from any other funds that may be received or built up by herself, by the spouses jointly, or by Peter.
- Jane can argue that these funds should form part of her share of the assets in the financial settlement in any divorce.

## **Pre-nuptial agreements**

- This is a sensible option for Peter and Jane to consider. A pre-nuptial settlement is an agreement entered into prior to the marriage which sets out the agreement the parties have reached as to how their finances will be divided in the event that the marriage breaks down.
- A post-nuptial agreement sets out (in the same way) the agreement a married couple have reached for the financial settlement in the event of their divorce; but after they have married!
- A pre-nuptial (or post-nuptial) settlement is not strictly binding upon the court (since a judge will always have the final say). However the terms are very likely to be followed by a judge when deciding upon the terms of the financial settlement, particularly after a short marriage; but perhaps less likely if there are children of this second marriage.
- The courts are increasingly in favour of allowing the parties to determine the outcome of a failed marriage in this way.
- To have the best chance of being upheld, a pre-nuptial settlement should meet the following standards:
  - It should be entered into by each side without undue pressure, ideally several weeks before the wedding.
  - Each party should have received independent legal advice from a specialist Solicitor.
  - Each side should have a full understanding of the other party's financial position.
  - Arrangements for the children should be avoided, since the judge will prefer to make decisions about children at the relevant time, based upon what is in their best interests.
  - The financially weaker party should have his or her essential needs for housing and income met by the terms of the agreement.

## **Conclusion**

As the courts move increasingly towards allowing couples the financial autonomy to determine their own financial settlement on a divorce, the chances of the terms of a pre-nuptial settlement being followed grow ever stronger. Even if the terms of the agreement are not followed in their entirety, they are likely to have a significant impact upon the final financial settlement.

Where assets are brought into the marriage by one spouse, or inherited by them, ring-fencing those assets so that they can be easily traced and identified, will add weight to the argument that they should be retained by that spouse.

For advice on pre-nuptial agreements and asset-protection for divorce contact AMD's team of specialist family solicitors at:

**Henleaze Office –**

**Alison Dukes – Director  
Anne Thistlethwaite – Senior Solicitor  
John Todd – Senior Solicitor**

100 Henleaze Road  
Henleaze  
Bristol  
BS9 4JZ  
0117 9621205

**Shirehampton Office –**

**Rebecca Isaac – Solicitor  
Chris Brown – Senior Solicitor**

2 Station Road  
Shirehampton  
Bristol  
BS11 9TT  
0117 9235562

**Website –**

[www.amdsolicitors.com](http://www.amdsolicitors.com)

