

## Second marriages: Protecting your assets

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**It might not be romantic – but there are a number of financial considerations to be aware of when entering a second marriage. Barrister, Clarissa Wigoder, explains how to ring fence your assets to ensure your wealth remains secure**



According to Relate, a second marriage is more likely to be successful than a first marriage, with the divorce rate only 31% among couples where both parties have been married previously, compared to a 45% chance of divorce if it is a first marriage for both.

However, parties entering into a second marriage are also more likely to have already accrued significant assets of their own, and many will already have children.

A common question among couples entering into a second marriage is therefore how to ensure that the inheritance they intend for their children from the first marriage is properly ring-fenced and protected in the event that their second marriage does not work out.

### **Consider a pre-nup**

One of the first things to consider is a pre-nuptial agreement or 'pre-nup'. Not just reserved for the rich and famous, a pre-nup can be an effective route to preventing disputes as to 'who gets what' further down the line, even in second marriages where the assets are relatively low-value.

Importantly, a pre-nup has to be carefully considered and should be drafted by professional lawyers.

Many will think back to the famous pre-nup of Steven Spielberg and his first wife Amy Irving which was thrown out of court as it was scrawled on the back of a cocktail napkin. Not recommended!

The pre-nup needs to be signed by both parties, ideally well before the wedding, and both parties should have taken independent advice – from separate lawyers – on the terms of the agreement.

I would also recommend including a schedule setting out both parties' assets –

this guards against any suggestion later that there was not full and frank disclosure of each party's financial circumstances at the time of signing.

When considering whether to enforce the pre-nup down the line, a court will only uphold the agreement if it was freely entered into by both parties, with their eyes wide open.

The other matter a court will consider when deciding whether to uphold a pre-nup is whether the agreement meets the needs of both spouses following the divorce.

If the division of assets stipulated by the pre-nup would leave one party unable to meet their own needs, or those of any dependent children, a court will be likely to overrule the agreement and substitute it with their own determination as to what would be a fair division.

Under the current law, if a spouse wants to challenge a pre-nup, the burden of proof rests with them to show how the agreed division of assets would not be fair.

A pre-nuptial agreement does not have to cover the entire asset base. It can instead deal with a very specific asset such as a painting, watch or car. Or, in the case of Facebook founder Mark Zuckerberg and wife Priscilla Chan, the promise of one date night a week in a 'relationship contract' (allegedly).

As the parties settle into married life, they should continue to hold their assets consistently with the terms of the pre-nup. For example, if one party has sought to "ring-fence" a particular property that they wish to retain in the event of divorce, that property should be held in the sole name of that spouse – transferring an asset into joint names can complicate matters.

### **Children**

A further consideration that should be considered when drafting the agreement is the likelihood of there being any children of the second marriage.

If this is a possibility, it may be sensible to include conditional clauses in the pre-nup, specifically providing for the needs of any future children of the marriage.

Alternatively, the agreement can stipulate that the pre-nup is formally reviewed upon the birth of any new child, and the terms can be varied by agreement at that stage.

### **Rewrite your will**

If the aim is to protect any inheritance for children from a first marriage, it is important to know that a new spouse may acquire the right to inherit assets held in your sole name (even those "ring-fenced" in a pre-nup), and so a carefully drafted will is essential in ensuring that your intended division of assets does not become a source of conflict between your loved ones.

Where you do decide to hold assets jointly with your new spouse, these should be held as tenants in common rather than as joint tenants, so that each party can dispose of their share in their will as they wish.

The distribution of assets set out in the will should be consistent with any pre-nuptial agreement.

As with a pre-nup, the will needs to be professionally drafted to avoid any potential confusion, and should be regularly updated to accommodate a new child or grandchild.

Having these conversations – whether about a pre-nup or a will – are never easy, but a frank and constructive approach at the start of the marriage can go a long way to preventing costly and emotionally fraught proceedings further down the line.

*Clarissa Wigoder is a barrister at 4 Paper Buildings*