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Are DIY pre-nups legally binding?

By Susannah Streeter
Business reporter, BBC News

In Hollywood, romance usually comes with financial strings attached in the form of a pre-nuptial agreement (pre-nup). It's now almost a rite of passage before celebrities who have fortunes to protect walk up the aisle.

Catherine Zeta Jones and Michael Douglas signed one and Britney Spears also apparently signed a contract with Kevin Federline before they married, and divorced.

But it's no longer just celebrities and the very rich who are putting signatures on paper other than their marriage licence.

Drawing up a pre-nup agreement is becoming more popular among the moderately wealthy, particularly those on their second marriages with children to consider.

"I've drawn up more pre-nuptial agreements in the last two years than in two decades as a practising family lawyer." said Maeve O'Higgins from Silverman Sherliker solicitors.

"Recent high-profile cases have certainly raised awareness about the benefits of such contracts" she added.

Cut price

An increasing number of people are now opting for cut-price do-it-yourself agreements, which can be filled out on the web.

Desktop lawyer, an online service offering a range of legal documents has seen a 17% increase in the number of pre-nups it has drawn up over the past year.

"The way our system is designed means that people can access a very sophisticated agreement which is just as good as a lawyer can produce," said Richard Cohen, solicitor and joint chief executive Epoq, which runs the service.

"We always advise people to take legal advice when considering opting for a pre-nuptial agreement and that is available through the site."

Obtaining the right legal advice could be crucial if the pre-nup goes before a judge, particularly in England and Wales - because at the moment they are not always legally enforceable.

Respect

In the United States and in most of Europe they are legally binding and in Scotland such agreements are given much greater respect by the courts.

If a couple do decide to sign a pre-nup in England and Wales, it will only be taken into consideration when a judge rules how assets should be split if the marriage fails.

However, a case being considered by the Supreme Court could change this.

It is due to decide whether a pre-nup signed between German heiress Katrin Radmacher, and her former husband, Nicolas Granatino should be upheld.

They were divorced in London and Ms Radmacher won her bid to have the agreements recognised under English law at the Court of Appeal in July 2009.

But Nicolas Granatino has taken the battle to the UK's highest court, claiming he did not know the full extent of her wealth.

Guidance

The case is being closely watched by family lawyers, who say they desperately need guidance.

"It's horribly confusing at the moment because we simply don't know what to advise clients. We don't know if these agreements will be taken into account or not. All we can say is that they might be but the law is likely to change," said David Allison, the chair of Resolution, an umbrella body for 5,700 family lawyers.

"What we really would like from the Supreme Court is some clarity or guidance on whether these agreements will be enforceable, and in what circumstances. For example, if legal

advice is a requirement, if full disclosure is a requirement and whether there should be a cooling-off period."

Ajudgement is not now expected until the Autumn 2010. So what is the advice for people who want to sort out their financial affairs and get married before then?

"If you have been properly advised and the basic safeguards have been observed, it's certainly the case that the person with wealth will be offered protection - or a certain amount of protection." says Maeve O'Higgins from Silverman Sherliker.

She added 'It's impossible to say that the agreement will be upheld in its totality, but it's almost certain that the person would be more secure than if they didn't have one.'

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