

Pre-Marriage & Pre-Registration Agreements



We take out life insurance as a sensible step in case the worst happens; we wouldn't dream of driving a car without insurance and we certainly wouldn't go skiing without travel insurance. In fact everything we do in life is tied up in contracts and disclaimers. So why don't we think the same way about marriage?

In much of Europe and the US Pre-marriage (sometimes called Antenuptial or Prenuptial Agreements) have become the norm proving that they are not just for the rich and famous. However, in England and Wales we seem to be far more reserved often dismissing the idea out of hand as "unromantic and pessimistic".

However unromantic it seems, Pre-Marriage Agreements are about both parties feeling secure in their relationship. They give couples the power to make financial arrangements between themselves and provide security and protection in the event that their union fails.

What is a Prenup?

A Pre-Marriage Agreement is a document made by a couple before their marriage (or Civil Partnership) which sets out how their assets will be dealt with upon divorce/dissolution. They establish who comes out with what.

Do I need one?

A Prenup is not essential for everyone. However, if you find yourself in any of the following circumstances it is at least worth considering:

- You are getting married later in life and have already built up assets of your own and you wish to protect them
- You own a business
- You are expecting an inheritance
- You have children from a previous relationship and wish them to inherit rather than your spouse
- You have significant assets such as properties, investments, jewellery, antiques etc.
- You are getting married for a second time
- You have a significantly higher income than your partner

Are they legal?

Following a landmark decision in the Supreme Court, in effect, they are now binding unless they are considered by the court to be unfair. A list of factors have to be looked at by the court when considering the weight to be placed upon any prenuptial agreement in the event of a divorce such as whether any pressure was exerted upon the other to enter into the agreement amongst other things.

The Law Commission has recently recommended the introduction of legally binding 'qualifying nuptial agreements'.

Qualifying nuptial agreements would allow the couple to make a mutual agreement on how their finances or property should be divided on separation. However, they would only apply after the financial needs of both partners and their responsibilities towards any children had been met.

Furthermore, agreements would only be legally binding if both parties have disclosed all relevant information about their financial situation and had received legal advice.

Importantly, the Law Commission specifies "financial needs" but not "reasonable needs," which can be more generous. Translating this, if no financial hardship was going to occur then the agreement could be upheld.

How can we help?

A Prenup Agreement is a bespoke document and as such should always be drafted by an experienced family lawyer. Family Law Partners have a team of lawyers specialising in these types of agreements. Options such as Mediation and the Collaborative process can assist greatly in discussing the issues and reaching an agreement.

It is vital that you raise the subject with your partner well in advance of your wedding or civil ceremony. You should allow at least three months for a straight forward agreement to be finalised – longer if it is complicated - and it should be signed at least 28 days before the ceremony if possible. However, if you have left it too late the option of a Postnuptial/Registration agreement should be considered.

Contact details

If you would like to discuss issues arising in this factsheet or if there is some other legal issue we can help you with then please contact a member of the team on 01273 646900 or by email: info@familylawpartners.co.uk

