



## Pre and post-nuptial agreements

### What is a prenuptial agreement?

A prenuptial agreement (sometimes called a pre-nup, premarital agreement, or prenuptial contract) is an arrangement entered into by a couple before they get married. It stipulates what will happen should the marriage break down.

Pre-nups can also be important in second marriages, or in marriages where one or both parties have brought wealth to the marriage. Also, if either party has an asset or business that they want to protect, particularly when this asset is shared with third parties.

### What is a postnuptial agreement?

A postnuptial agreement (also called a post-nup or a post-marital agreement) deals with the same as a pre-nup (i.e. what should happen to assets in the case of a divorce) however it is entered into during the marriage rather than before.

### What should I consider first if I want a prenuptial agreement?

It is a good idea to seek legal advice when considering/signing a pre-nup. It should happen well before the wedding day and be discussed between the couple. All financial information should be disclosed.

### Postnuptial agreements and prenuptial agreements in UK law

Pre-nups and post-nups are not strictly binding in England and Wales in the same way as a commercial contract would be. However, the courts have ruled that where agreements are freely entered into by each party the court will hold the parties to the agreement unless it would be obviously unfair to do so.

The court will consider the following factors:

- Did both parties have independent expert advice before signing?
- Was all financial information disclosed at time of signing?
- Did either of you sign under undue pressure?
- Do the terms of the agreement meet everybody's needs, including those of your children?

Not all prenuptial agreements will be upheld, nor are they automatically binding. However, if you are the financially weaker one within the marriage, you should assume that the pre-nup agreement will be upheld. By entering into the pre-nup you are signing up to the expectation that it will be.

### Is a pre-nup agreement the best form of wealth protection?

To best protect your wealth the best option is not to get married at all as co-habiting couples have far less rights over assets than married couples. However, if you do want to get married then a pre-nuptial agreement is the best option.

If you are entering a second marriage or marrying later in life they are particularly useful to protect assets that were acquired before the marriage – perhaps to ensure they are passed on to your children.

Pre-nups can assist in minimising the financial and emotional impact on the family if there is a divorce. But they should not be entered into lightly or without full consideration of their implications.

It is often best as well to keep assets separate, in one's sole name. For example, if you have brought a substantial shareholding or property into the marriage, as well as signing a premarital agreement, it is best to keep that property in your own name, and not put it into joint names.

There are other ways of protecting existing wealth in addition to or instead of pre-nups or post-nups (trusts, for example).

### **Why should I have a pre-nuptial agreement?**

Judges have a huge discretion on divorce when dealing with finances. Courts can transfer property and cash sums between spouses, and award substantial maintenance to be paid.

Pre-nups should be considered in the following types of cases:

- If you wish to protect your business interests, trust interests, inherited wealth or assets owned before your marriage
- If you would like to be clear about what the financial arrangements will be in the event of a divorce
- If you wish to reduce the likelihood of incurring significant legal fees in the event of divorce

Perhaps most importantly, premarital agreements are useful in providing evidence of what property was brought into the marriage. This is called non-matrimonial property. It is therefore less likely to be divided equally, because it is not the product of your marriage partnership. Having evidence of what properties or savings were brought into the marriage, particularly if it is a short marriage, is very helpful.

### **What does a pre-nup cost in the UK?**

The cost of your pre-nup will depend on many factors, including:

- How complex the agreement is likely to be
- How much financial disclosure is required and whether it will require expert evidence
- Whether your partner plays a full role in the negotiations or leaves everything to you
- Whether the agreement has to deal with international aspects
- How much correspondence is sent, and the number of meetings that are needed, to finalise the agreement
- Whether an experienced barrister needs to be involved in hammering out the details of the agreement

### **What should I consider next, once I have a pre-nuptial agreement in place?**

It can be useful to review the agreement every few years to ensure that it is still relevant and to keep up to date with any changes in circumstances.