

Our

10 Top Tips

for

Pre-Nuptial

Agreements

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Pre-Nuptial Agreements

People who marry don't expect to divorce. Sadly for many, that is exactly how things turn out, and it means that finances, property and other assets are lost in the process. It is why more and more people are looking at ways of protecting the things that belong to them before saying "I do".

Here are our top tips for getting the right pre-nuptial arrangements in place.



01

Who can benefit from a Pre-Nuptial Agreement?

These sorts of arrangements are not just for celebrities or high-net-worth individuals. Anyone with assets to protect could benefit from a pre-nuptial agreement. They help make clear that certain assets belong to you alone and won't be shared during the marriage or in any future divorce. It's a way of ring-fencing inherited assets, family heirlooms, an interest in the family businesses or property acquired before the marriage.

By setting this out in a properly prepared pre-nuptial agreement, it makes it less likely that a court would award a share of that property to your partner if you were to divorce. You have a degree of freedom to agree your own terms without having a court impose a solution.

“Anyone with assets to protect could benefit from a pre-nuptial agreement.”

02

Are Pre-Nuptial Agreements legally binding?

Pre-nuptial agreements are not automatically legally binding. They are not usually the first piece of evidence a court turns to when deciding how to redistribute a divorcing couple's assets and income. The court has a great deal of discretion as to the financial orders it makes.

But pre-nuptial agreements are frequently taken into account. The court is likely to uphold an agreement that has been freely entered into by each party, with a full appreciation of its implications - unless in the circumstances it would not be fair. So pre-nuptial agreements are almost as good as binding, provided they are fundamentally fair.





03

Do I need specialist legal advice when contemplating a Pre-Nuptial Agreement?

You and your partner should seek independent legal advice because you both need to understand, and be sure that the other understands, the implications of the agreement. It is important that both parties show that they intend the pre-nuptial agreement to be binding. Proof that you have taken independent legal advice is usually the most simple, and sometimes the only way of demonstrating that you entered into the agreement knowingly.

04

When is the right time to consider a Pre-Nuptial Agreement?

A pre-nuptial agreement should be signed well in advance of your wedding. All financial disclosure and negotiations need to happen in plenty of time for legal advice to be taken, for the agreement to be firmed up, and for the arrangement to be put in place. Doing it any other way is risky. Your spouse might later argue that they were put under last minute pressure and didn't have enough time to fully understand the terms and their effect on future financial claims. It is an argument that could persuade a court to disregard the agreement entirely.

“[A Pre-nup] is merely a mechanism for protecting yourselves if things were to go wrong.”

05

Will I need to talk frankly about my finances?

They say that good communication is the key to a successful marriage. It is also key to a pre-nuptial agreement. Some people find it easier than others to discuss finances. You will need to put aside reservations and be open and honest with your partner about the assets you own and those you are not willing to share.

One of the biggest barriers to having a conversation about a pre-nuptial agreement is the idea that you are already contemplating divorce or trying to gain financially from the marriage. You're not. The statistics on marriage speak for themselves; any discussions around pre-nuptial agreements should be framed as a worst case scenario possibility. It is merely a mechanism for protecting yourselves if things were to go wrong.





06

Will I need to make decisions about which assets I want to protect?

As part of the preparation for a pre-nuptial agreement, you will need to be clear about the assets you own and the extent to which you would share them on divorce. You will also need to carefully consider your partner's assets and what it would mean to relinquish your entitlement to a share.

A pre-nuptial agreement doesn't just set out what should happen to assets if you and your partner were to divorce or separate. It also covers what would happen to your assets on your death, and protects the inheritance prospects of children for example.



07

What do I need from the Pre-Nuptial Agreement?

What are the things you require to maintain a standard of living not too dissimilar from that you will enjoy during the marriage? Needs change over time as children are born and other significant events, like the loss of a job or incapacity, take hold. Your pre-nuptial agreement should either provide for these circumstances, or you should review your agreement as things change. That will make it more likely that the court will uphold the agreement.





09

Do I have to enter into a Pre-Nuptial Agreement?

A pre-nuptial agreement must have been entered into freely. That means that no one should be forced into signing any sort of terms around the protection of assets. The agreement is unlikely to be upheld (it will be worthless, in other words) if the court finds evidence that there has been duress or undue influence, or that one of you has exploited a dominant position to secure an unfair advantage.

08

Does the Pre-Nuptial Agreement need to be fair?

This could be the difference between your agreement being enforceable and not. Fairness is hugely important. When the court is deciding how to divide finances and assets, it has to look at all the relevant circumstances. These include the requirements of any children of the family, and the needs of the parties. If the agreement provides for you to be comfortably provided for while your partner has less than they need, that probably won't be considered fair. The result in that scenario is likely to be that the pre-nuptial agreement is overridden by the judge's discretion to distribute assets fairly.

10

Is there a financial benefit to entering into a Pre-Nuptial Agreement?

If you are unsure about whether a pre-nuptial agreement is for you, it is worth bearing in mind two things. Firstly, although you will pay legal fees for getting the agreement in place, these are usually far less than the cost of litigating over the division of your finances later on.

The second point is that pre-nuptial agreements, for all the uncomfortable conversations they prompt, often lead to less acrimonious separations. Parties know and accept their positions in many respects because they have already agreed to them. This should lead to fewer arguments should you later divorce and result in a more amicable relationship between you.



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