



SERVICE  
GUIDE

Prenup  
agreements





A prenup agreement (also known as a prenup) is a formal, written agreement between two partners prior to their marriage. It sets out ownership of all their belongings (including money, assets and property) and explains how it will be divided in the event of the breakdown of their marriage. Prenup agreements are perceived by some to be pessimistic and unromantic. Others argue that a prenup can circumvent time, expense and acrimony. We like to think of them as a type of insurance policy.

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### So why get one?

A prenup agreement can be put in place to provide peace of mind for both parties.

#### They can give you peace of mind if:

- You want to protect inheritance or future inheritance
- There are assets and/or property that would be very hard to split 50/50
- You have children from a previous relationship and want to ensure certain assets are reserved for them and protect their inheritance rights. (It is also crucial to make a will)
- Either party own a business which they would like to retain control of
- If your spouse has outstanding debt, a prenup agreement with a 'debt clause' can protect you from being liable.

## Are prenup agreements legally binding?

It is important to note that prenup agreements are still not legally enforceable in England and Wales – at least for now.

However, following the landmark decision in the case of *Radmacher v Granatino* in October 2010, judges are attaching more weight to prenup agreements and are more likely to uphold them, unless they are considered to be unfair at the time the parties get a divorce.

In our experience, a prenup agreement is more likely to be upheld if:

- it is signed at least 21 days before the wedding day
- its contents are reasonable
- it is clearly not out of date (providing for future children, for example, and preferably a review after a period of time)
- it was properly drafted by a family lawyer with both parties receiving independent legal advice and providing full financial disclosure.





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## How do I create prenup agreement?

When considering if the prenup agreement is fair and should be upheld, the Court will look at things such as whether both parties understood it properly and if they had enough time to review it before signing. Therefore when a prenup agreement is created you need to ensure the following:

- To comply with UK law, the prenup must be drawn up by a qualified solicitor
- Both parties must have separate solicitors to avoid any claim of conflict of interest
- All assets must be fully disclosed by both parties
- Both parties must fully understand the agreement
- Both parties must voluntarily agree to it
- Both solicitors must confirm it was entered into freely and knowingly
- The prenup agreement should be signed at least 21 days before the marriage.

## I'm getting divorced and there is a prenup in place

When we advise a client about a relationship that has broken down and a prenup agreement is in place, we ask certain questions. These include:

- How soon before the wedding was the prenup agreement signed?
- Was any pressure placed on the parties to sign it?
- How was it negotiated?
- Was there any negotiation at all, or was the agreement imposed on one party?
- Was there full and frank disclosure of the finances of both parties?
- Did both parties receive legal advice?

## We're already married but want to sign an agreement

If you are already married and want an agreement in place to define what will happen in the event of the marriage ending, then we advise considering a postnuptial agreement. A postnuptial agreement (or postnup) can effectively do the same things as a prenup, except postnups are signed after marriage has occurred.



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For more information on nuptial agreements please call our  
Client Care Team on **0330 404 2168**  
to speak with one of our specialist family lawyers.  
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