



Pre-Nuptial Agreements

With 1 in 3 marriages now ending in divorce, pre-nuptial agreements are on the rise, acting as a useful tool for those wanting to safeguard their assets. While this may seem unromantic, 'prenups,' are simply a way of planning for the future, and can be both practical and financially prudent. But what exactly is a pre-nuptial agreement? How do they work? And what are the limitations?

What is a Pre-Nuptial Agreement?

Before a couple marry or enter into a civil partnership, they may want to look at having a pre-nuptial agreement. This allows a couple to formally set out in writing what should happen to their assets should the relationship break down in the future. In the sad event the marriage does come to an end, a prenup will enable certain assets to be ring-fenced, which may exclude them from the terms of the divorce settlement. Without such an agreement in place, divorce can become something of a lottery, and the aim is to reduce this. Courts often rule there must be a 50:50 division of assets. If one party of the marriage is significantly wealthier than the other, then a 50% loss could prove to be devastating.

How does a Pre-Nuptial Agreement work?

If you are considering a prenup, you and your partner should seek independent legal advice well in advance of your wedding date. Although this may seem unromantic, it is very important. This is particularly true if you have children or other dependents to consider, or if your wealth has already been affected by a previous divorce. At Davis Gregory we can give professional guidance and use our expertise to negotiate an agreement you can be happy with.

This may include how assets are to be apportioned, which assets are to be protected, and other financial matters. It may not, however, cover other arrangements such as childcare. Remember, legal advice should be sought some months before the wedding. Otherwise, a court could decide that one party was under duress at the time of signing, thereby compromising the validity of the agreement.

A prenup should be regularly updated throughout the course of the marriage, especially if there is a significant change in circumstances - for example, if children are born, there is a large inheritance, or if one party becomes unable to work.

Should a marriage go on to break down, the pre-nuptial agreement will be considered by the Court in divorce proceedings. Prenups are becoming increasingly acceptable in England and Wales, and are usually enforced as long as the judge is happy that: legal advice was taken by both parties, the agreement was not signed under duress, finances have been appropriately disclosed and the contract is fair.

Pre-Nuptial Agreements - are there any limitations?

Pre-nuptial agreements do have limitations. They are not automatically legally binding. Courts can refuse to enforce them, particularly if the terms are unfair, or one party either did not understand the implications involved, or was put under pressure to sign. A court will also look at other factors within the marriage, such as children, the standard of living, length of union and the needs of each party. These may override the prenup.



Nevertheless, these limitations are being addressed, with the Law Commission aiming to draft a pre-nuptial Bill in due course. Such reforms will ensure there is a consistency in the way they are used, and may even make prenups legally binding.

What do I do next?

- Contact us as soon as possible, preferably when booking your wedding and reception. We have to investigate the financial situations of both partners so that we can give the necessary certificate that an agreement is fair, can give the right advice, and can be sure that no one is placed under pressure to sign when they may not wish to do so. This usually takes at least 2 months. There is little point in trying to set up a prenup in the last 2 or 3 weeks before the wedding.
- Be prepared to give full and honest information about your financial position. This is essential, because if one person has been misled about the other's finances, then they will be able to say that the agreement is not effective against them - making it all a waste of time.
- Realise that prenups are usually not straightforward. They are frequently used when one partner is more wealthy than the other, and can involve very valuable assets. Emotions can be involved, and concerns about whether or not you trust each other. As solicitors we have particular responsibilities to be sure that our clients have all the information and legal advice they need to be comfortable with signing their prenup, so that we can give our certificate to support the agreement.

- Legal costs need to be considered. If you would like us to prepare, and/or to advise and negotiate a prenup, we will need an advance payment of £1000 towards our costs and VAT. If you wish, we can work up to this limit, and then tell you if it will be exceeded and give you an estimate of the final overall cost. Please remember that our costs are payable whether or not a binding prenup is eventually made.

What is the next step?

Please call 01242 235202 to speak to us, fill in the [free assessment form](#) on our website or email family@davisg.co.uk

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