

"PRE-NUPS"

FAQ'S

What is a pre-nup?

A pre-nup is a legal agreement made between parties before they marry confirming how they wish to deal with finances in the event of separation or divorce. Further they can confirm the financial obligations of each party during the marriage.



It just does not feel right to have a pre-nup

Most of us take out insurance when we go on holiday without the wish or expectation of using it. A pre-nup does not stop you having a long and happy marriage and the preparation of a pre-nup can and should proceed on an amicable basis.

What does a pre-nup cover?

They are often used to identify the matrimonial and non-matrimonial assets of the marriage, particularly how assets acquired before and post-marriage should be dealt with in the event of separation in the future. They can cover: -

- Assets owned before marriage
- Assets acquired through inheritance
- Assets of value i.e. other properties, vehicles, bank accounts, investments, etc.
- Gifts e.g. jewellery and sentimental items received by one party during the marriage
- Pensions
- Whether the parties owe an ongoing responsibility to maintain the other.

Why is it important to have a pre-nup?



- It provides financial security during the marriage and transparency regarding how each party will conduct their financial affairs
- It allows parties to decide on how assets shall be divided if a later separation or divorce occurs. Each party knows where they stand.
- Affords protection in relation to assets that have been inherited and purchased or acquired long before the marriage.
- Limits the risk of long-winded Court proceedings concerning financial settlement and therefore cost effective.

Is a pre-nup legally binding?

In essence, yes. However, you must address several important points to ensure that a Court is likely to uphold the pre-nup.

The Court will have the overriding discretion as to whether a pre-nup should be binding or be given weight in matrimonial financial proceedings.

In the case of *Radmacher v Granatino* (2010), the Supreme Court stated:

"The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to the agreement."

To summarise the position, the parties must:

- Freely enter the pre-nup without pressure. Therefore, it is sensible each party seeks independent legal advice before entering into such an agreement
- Understand the implications of entering in to such a pre-nup. Further, understanding the financial consequences if there is a later separation or divorce.
- It is desirable that the pre-nup is a "qualifying agreement" within the meaning of the Law Commission's recommendation to parliament. Although this Bill has not been enacted, it is good practice to take account of this proposed legislation.
- Ensure the pre-nup is fair so the agreement holds weight in future matrimonial proceedings should they arise. This includes ensuring the agreement provides for the needs of the parties.

If a couple plans to start a family, it may be advisable to review the pre-nup during the marriage to meet the child's need.

What if we have assets abroad?

The English Court still has jurisdiction to deal with properties and assets that are abroad and so such assets should be included in the pre-nup.

How is a pre-nup prepared?

- The legal agreement has to be valid
- It must be executed correctly, have the relevant wording and signed correctly
- The pre-nup should be executed more than 28 days before the marriage.
- The parties must fully and frankly disclose their financial positions before entering into the agreement and it is best to document this in the pre-nup.
- Both parties should receive legal advice prior to entering into the pre-nup.



What if we have already married?

If you are agreed on financial matters, you should also consider entering into a post-nup with your spouse to legally record your intentions.



Why are pre-nups becoming more common?

Some people think that only wealthy couples should enter into such agreements, however any person who is considering marriage should consider whether a pre-nup is beneficial.

Many couples are finding themselves bringing assets and inheritances into their relationship and wish to preserve some separation of assets. Couples can also be concerned about the future inheritance by their children.

These assets have usually been acquired by one party before or during the relationship.

Most couples will have discussions regarding such assets before they marry and orally agree they will not make claims against the other in respect of their sole assets. However, without having a written agreement i.e. a pre-nup, if matrimonial proceedings commence, the Court cannot be expected to know the intention of the parties without convincing written evidence in the form of a pre-nup.

A pre-nup can avoid conflict in the future and clarifies the financial position if there is a separation or divorce.

Do pre-nups apply in same sex marriages and civil partnerships?

Yes.

Who can I contact for further advice?

If you wish to discuss whether a pre-nup is appropriate in your circumstances, then contact Enoch Evans Solicitors and speak with a Family specialist who can advise you.

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