

# Prenuptial Agreements



## You should consider having a Prenup if you fall into any of the following:

- ! You have assets such as a home, stock or retirement funds.
- ! Own all or part of a business.
- ! You may be receiving an inheritance.
- ! You have children and/or grandchildren from a previous marriage.
- ! One of you is much wealthier than the other.
- ! One of you will be supporting the other through University or College.
- ! You have loved ones who need to be taken care of, such as elderly parents.
- ! You have or are pursuing a degree or license in a potentially lucrative profession such as medicine.

## In Detail

No-one goes into marriage thinking that it may end up breaking down in the future. However, currently more than one in three marriages ends in divorce; when it comes to second marriages, the likelihood is, sadly, even higher. Most people sensibly recognise that separation and divorce is statistically likely to happen to them.

Prenuptial Agreements are not yet legally binding within the UK but if in place, they will form one of the factors considered by the court when exercising its powers in relation to financial settlements. Depending on the circumstances in which they are signed, they may be upheld in full.

The case of *Radmacher -v- Granatino* in 2010 established that "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".

There is now effectively a rebuttable presumption that a Prenup (and any other Marital Agreement) freely entered into by the couple with a full understanding of its implications, will be upheld by the court, unless it would be unfair to do so.

It is therefore advisable for anyone who is not content for a court to dictate how their assets should be divided, to consider a Prenuptial Agreement.

## To ensure that the provisions of the Prenuptial Agreements are upheld if the parties divorce in the future, it is advisable to follow a number of steps:

- Each party should take independent legal advice on the content of the Agreement before it is signed. This will demonstrate that each party signed it knowing the full implications of signing the document.
- The Prenuptial should be prepared and signed in good time before the marriage takes place. The Courts have previously dismissed Prenuptials prepared in haste before the marriage takes place, as this may place undue pressure on a party to sign the Agreement in order to ensure that the wedding goes ahead as planned.

- Parties should be aware that if they have children, it may be less likely that the Court will uphold such an Agreement, as the children will become the 'first priority' of any financial settlement.
- The parties must disclose their financial position to each other in full – sources of income, property, cash, investments, stocks, shares, and chattels must all be accounted for.

### **What is a Prenuptial Agreement or a "prenup"?**

Quite simply, a written, formal agreement entered into by a couple before they get married that sets out a game-plan for what they have agreed will happen to their assets in the event of a future divorce.

By entering into a Prenuptial Agreement, where there is a marked imbalance in the relative wealth of the two parties to the marriage, both partners can agree that on a split up the wealthier party should not suffer a 50% loss of assets, particularly if they have not been married long and if there are no children.

### **Who can enter into a Prenuptial Agreement?**

Any couple who are contemplating marriage or entering into a civil partnership.

### **If my spouse dies will the Prenup take effect?**

No. You need to have put in place Death Planning (Will) to deal with the division of your assets on death. Be aware that, under The Inheritance (Provision for Family and Dependents) Act 1975, a Court can make reasonable provision for certain categories of people if they have not been provided for.

### **Can I make a Prenup once I have got married?**

It is much better to agree all of these arrangements before the marriage takes place but it is possible to enter into similar Agreements once the marriage has taken place. These are known as Postnuptial Agreements.

### **Will a UK Court enforce the provisions of a Prenup?**

In most cases, the Court will be persuaded to implement the provisions of a Prenuptial Agreement provided that it has been properly drawn up in the manner recommended by a professional and provided it would not lead to an unjust result. The UK Courts always retain a discretion in family law matters and because of this it is possible that the Court may decide to overlook all or some of the provisions of a

Prenuptial Agreement in any given case so it cannot be said that there is an absolute rule that Prenuptial Agreements are always followed by a UK Court. However, it is likely that they will be or at least that they will be considered persuasive and will have a significant bearing on the financial outcome of any given case.

### **Can I change a Prenup once I have entered into it?**

Any Agreement can be changed if the parties to the Agreement consent.

### **What's the risk if I just download a cheap DIY Prenuptial Agreement from a web-site offering a cheap Prenuptial Agreement and some 'quickie' legal advice?**

We would not recommend any DIY solution even if it is coupled with some quick legal advice. Every person's situation is different and needs to be fully and carefully considered. There are many factors that need to be taken into account to ensure your Prenuptial Agreement will be enforced.

The actual Agreement should be properly drawn up by a qualified legal company and tailored to your requirements. It is a myth to think that a DIY Agreement will be cheap and effective. It generally needs to be re-drafted and will save neither time nor money. Get it right and you could well save millions. Conversely, the cost of getting your Prenuptial Agreement wrong may well run into millions of pounds. You could lose up to 50% (or in some cases that we have recently seen up to 60%) of your entire personal wealth, property, income, investments, pensions, cars, antiques...the lot.

In addition, you may have to contribute 50% of your future income and earnings. It can take a life-time to recover financially from a divorce settlement imposed by a UK Court. DIY solutions are dangerous.

### **Why should I use you to draw up a proper Prenuptial Agreement?**

The cost of using a professional is minimal compared with the financial protections and benefits that you can get from a properly drawn-up Prenuptial Agreement.

UK Courts are notoriously arbitrary in divorce settlements and are unlikely to have any mercy on a couple that try to rely on a make-shift Agreement where neither party has had the foresight to take any proper legal advice. The greater your wealth, the greater the importance of getting independent professional legal advice.