

AN ESSENTIAL GUIDE TO PRENUPTIAL & POSTNUPTIAL AGREEMENTS

EVERYTHING YOU NEED TO KNOW ABOUT
PRENUPTIAL AND POSTNUPTIAL AGREEMENTS



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The Essential Guide to Prenuptial and Postnuptial Agreements

INTRODUCTION

Prenuptial (Prenup) and Postnuptial (Postnup) agreements are becoming increasingly common among couples looking to safeguard their financial interests. These agreements can incorporate a broad range of provisions and set out how assets will be divided in the event of divorce or dissolution of a civil partnership. Whilst not automatically binding under English law (it is not possible to oust the jurisdiction of the court), courts are increasingly willing to uphold them if they meet specific criteria.

Prenups are particularly useful for individuals with significant pre-acquired assets, generational wealth, trust interests, family businesses, or international financial interests. They may also be used to protect one party from liability to debts held by the other party. They provide clarity, reduce the risk of contentious legal battles (thus avoiding the associated legal costs), and protect both parties. Postnups, while similar, offer the flexibility of being created at any time after marriage or civil partnership.

A well-drafted agreement ensures fairness, transparency, and clarity, helping couples plan for the future with confidence. Seeking professional legal advice is essential to ensure an agreement is properly structured, meets the necessary legal criteria and makes it more likely to be upheld by a court in the event of a dispute.



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THE ESSENTIAL BREAKDOWN

Prenuptial vs Postnuptial Agreements Explained

WHAT IS A PRENUP?

A Prenup is an agreement made by a couple before they marry or enter into a civil partnership, and sets out how they wish their assets to be divided if they should divorce or have their civil partnership dissolved.

WHAT IS A POSTNUPTIAL AGREEMENT?

A Postnup is an agreement that is reached after the parties have married. It may be entered into shortly after marriage if a couple has run out of time to reach an agreement before the wedding ceremony. Alternatively, it is possible to enter into a Postnup at any time during the marriage. An example might be if a couple is experiencing marital difficulties and want to resolve their financial arrangements to provide certainty for the future whilst giving the marriage a chance to continue.

OVERVIEW

Both Prenups and Postnups are incredibly useful tools for safeguarding financial interests and providing clarity in marriages or civil partnerships.



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FREQUENTLY ASKED QUESTIONS

Do Prenups hold up in court?

When considering a prenuptial agreement in the context of an application for financial remedies on divorce, a judge must consider all the relevant circumstances of the case. The significance of a Prenup will be as a relevant circumstance that the courts will take into account. In the seminal case of *Radmacher v Granatino* [2010], in which Payne Hicks Beach, led by The Baroness Shackleton of Belgravia, acted for Mr Granatino, the Supreme Court said:-

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

The test set down is:-

- The agreement must be fair and reasonable in the circumstances that prevail at the time that the agreement is being considered by the court.
- Both parties must enter into it freely and without undue pressure.
- Each party must have a proper appreciation of the implications of the agreement.
- Each party must fully disclose their financial situation.
- Both parties should have independent legal advice.

Can you change a Nuptial Agreement after signing?

Yes, a Prenup or a Postnup can be reviewed at any time, but both parties must agree to the changes and seek legal advice to ensure the revised agreement remains fair and valid. Some nuptial agreements include a review clause for the parties to revisit the agreement after a certain period of time or upon certain life events, for example the birth of children.



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Does having a child invalidate a Prenup?

No, but the birth of a child can affect how the agreement is viewed by the court. An agreement will not be considered to be fair if it prejudices the reasonable requirements of any children that the parties may have.

Do I need a Prenup if I have a will?

A Prenup deals with asset division in divorce, whereas a will determines how assets are distributed upon death. It is advisable to have both in place for comprehensive estate and financial planning.

Top Considerations for a Prenup

If you are considering entering into a Prenup then we would advise you to take legal advice well in advance of a proposed marriage or civil partnership ceremony.

The key considerations will be:-

- The rationale for entering into the agreement – whether this is to protect pre-acquired wealth, generational wealth or to protect one party from responsibility for the other party's debt.
- A full picture of the financial landscape will be required so that each party has a full appreciation of the implications of the agreement.
- Ensuring that the financially weaker party is properly provided for and that their reasonable requirements are met.
- Deciding whether the agreement will be reviewed in the future after the expiration of a particular period of time, or on a change of circumstances.
- Ensuring that the agreement is properly drafted and that the parties have both had the opportunity to take independent legal advice on the agreement to give the agreement the best possible chance of being upheld by the court.

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UK Legal Framework & Process

For a Prenup or Postnup to be legally valid in the UK, it must:-

- Be entered into freely by both parties.
- Include full financial disclosure.
- Be fair in the circumstances prevailing at the time that the court is considering the agreement.
- Be signed well in advance of the wedding to avoid one party being placed under undue pressure to sign.

How to approach the conversation

Discussing a Prenup can be a sensitive matter and may be considered unromantic. To make the process less fraught we recommend:-

- Starting discussions early – it is advisable to raise the possibility of entering into a Prenup at an early stage so that it does not come as a shock to one party when the wedding planning is underway.
- Be transparent about the reasons for the agreement – openly discuss financial expectations and ensure that the proposals make fair and reasonable provision for the financially weaker party.
- Seek legal guidance at an early stage – both parties should consult their own independent specialist lawyer who can represent their interests in the negotiations and ensure that the agreement meets the necessary criteria.



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“Payne Hicks Beach have a well-deserved reputation for handling complex and sophisticated matters, and have an exceedingly strong team who go above and beyond for their clients.”

CHAMBERS HNW 2024

HOW CAN WE HELP?

Payne Hicks Beach provides expert legal advice on drafting, reviewing, and negotiating Prenuptial and Postnuptial Agreements. Our team ensures that agreements are fair, legally sound, and tailored to your unique circumstances.

GET IN TOUCH

For more information on our services, lawyers and free resources, [click here.](#)

OUR SERVICES

PLANNING FOR MARRIAGE & COHABITATION

- Pre and Postnuptial Agreements
- Cohabitation & TOLATA
- Civil Partnerships & Same Sex Marriage
- Trusts & Divorce

NEGOTIATING SEPARATION & DIVORCE

- Non court based dispute resolution
- Financial remedies
- Disputes and litigation
- Sharia divorce

ARRANGEMENTS FOR CHILDREN

- Parenting agreements
- Child arrangement orders
- Child abduction

PATHWAYS TO PARENTHOOD

- Surrogacy
- Adoption
- Fertility

OUR ESSENTIAL GUIDES

A PRACTICAL GUIDE TO DIVORCE AND FAMILY LAW:

Overview of the legal and financial aspects of ending a marriage or partnership. It covers the divorce process, including key steps, timelines, and legal requirements, as well as guidance on choosing a solicitor to protect your interests.

YOUR ROADMAP TO MODERN FAMILY LAW:

Overview of legal considerations for building and managing a family in today's world. It covers key topics such as the surrogacy process, legal parenthood for intended parents, enforceability of surrogacy contracts, and laws around surrogate payments.



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