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The law firm for success

Talking about prenups

How to protect your financial assets and your relationship





I'm very glad we finalised the agreement and equally pleased we haven't discussed it since signing!

Client

Popping the question?

If you're considering a prenuptial agreement, it may help to know what's involved in the process.

Engagements are a time of hope and excitement, which is why discussing a prenuptial agreement with your partner can be tricky. Yet more and more couples are doing so. There are many reasons why: one or both parties may have built up substantial wealth or stand to benefit from an inheritance. It may be at the request of family, trustees or shareholders. Or they may see it as a way to plan their finances.



Whatever your circumstances, prenups (along with pre civil partnership agreements and postnuptial agreements) can save a lot of stress, heartache and legal fees if the worst should happen. While they are not yet legally binding, family courts around the world will generally uphold nuptial agreements if they are fair and both parties fully understand the implications.

So, what happens if you decide to get a prenup? First of all, you'll need to speak to your partner. It's a good idea to do this early because it can take anything from a few weeks to several months to draft an agreement, which ideally should be signed no later than 28 days before the wedding.

Next, you will both need independent legal advice. Look for a lawyer with strong experience of nuptial agreements, with whom you feel comfortable. He or she will be able to help you to create the right style of agreement for you.

When it's time to draft the prenup, you will each need to make clear your financial position – the agreement will not work unless financial disclosure is correct. Considering your future plans – such as where you will live, or if you're likely to have children – will help you to tailor the document to your situation. At Withers, we often use a collaborative approach to prenups



where a couple and their lawyers get together and talk things through. Or those who prefer not to discuss the details directly can leave it to their lawyers to negotiate.

Once agreed, the prenup can be filed away and hopefully, unless anything major happens that means you would both like to amend it, forgotten.

How to talk about prenups

We have advised many international clients on pre and postnuptial agreements. Here are our tips on broaching the subject.

1 Introduce the idea early

It's never too soon to talk about prenups. Much as you would expect to discuss whether you intend to start a family, or where you'd like to live long term, it's less stressful if you normalise the idea from the outset of your relationship. Ideally you would raise the topic before proposing, but if you're already engaged, bring it up as soon as you can before starting to plan the wedding.

2 Use friends as examples

If friends or acquaintances mention that they signed a prenup, making reference to their situation can make the idea seem less alien. As prenups have become more common in the past few years, the conversation is not as hard because people will often know someone who has one.

3 Choose your moment

Find a time when your partner is in a good mood, and you have time to talk things through properly. Choose a neutral location, perhaps when you're going for a walk or having dinner, to help ease the conversation.

4 Be straightforward

Your first concern may be to avoid upsetting your partner but being straightforward is always the kindest approach. Beating around the bush is unwise. Be clear, speak kindly, get it done and then you can forget about it.

5 Plan together

Strong marriages are built on communication so a frank talk about the future can strengthen you as a couple. The right outcome will be different for everyone, so don't be afraid to raise what you think would be fair in different scenarios, such as if you have children or move countries, or if one of you comes into an inheritance.

6 Show it's not personal

Remember, it's not always the individual themselves that is suggesting a prenuptial agreement. Explaining this makes the conversation easier. If the same requirements apply to everyone who marries into your family or to all shareholders in private companies, it shows that nobody is being singled out.

7 Focus on fairness

Try to keep your initial talk to broad principles on which you can both agree. Where there is a big financial disparity between partners, it's a no-brainer to get a prenu. Many people accept it as fair that wealth acquired before a marriage, or inherited from family, should be protected.



8 Offer to cover costs

If you are the financially stronger party, helping your partner to get legal advice shows that you intend to meet their needs. Courts will only uphold a prenup if it's fair, which means that all parties need to be well advised.

9 Talk the same language

If you or your partner are international citizens, it may be helpful to talk about the marital property system in your home country. A prenup can help you to recreate that or adapt it to suit your circumstances.

10 Treat it as insurance

You can explain the need for a prenup in terms of insurance – you insure against burglary not assuming that bad things are going to happen, but to make things as painless as possible if they do.



I came right out with the subject

My fiancé and I talk a lot about our future and how to grow our financial security but before we marry, we will be signing a prenuptial agreement so that what I have now is mine, and what we earn together going forward, we share.

I've spent years building a property portfolio that is my main source of income and hopefully my pension. I don't want to find myself in a vulnerable position if things don't work out.

We have a very candid relationship, so I came right out with the subject one day while we were out for a walk. My fiancé showed a flash of surprise, but he made it clear that he understood. I think it's important that the other party sees you have their interests at heart too, and you're committed to building a strong future with them. He knows that the prenup isn't just about me jealously guarding my wealth.



For us, putting a prenuptial agreement in place was a no-brainer

We both have familial assets on each side whereby both of our parents' recent home purchases were supported by our own individual funds. Putting an agreement in place allows us to protect those who we hold dear and whose homes should never be at risk in the

event of our marriage breakdown. Was it difficult to agree? No. Was it difficult to talk about? No, but it is difficult to remember to separate the emotion of the situation to the rationale, as the rationale should prevail in such situations.



Get in touch

If you would like to find out more about how we can help you, please scan here.



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