



GARNER & HANCOCK LLP

E-BOOK

PRENUPTIAL AGREEMENTS - QUESTIONS AND ANSWERS

All your questions answered on Prenuptial Agreements



When and why should you be reading this article?

- ✿ You may be contemplating marriage or engagement.
- ✿ Your parents may have given you money or property that needs protecting.
- ✿ You may have had a divorce before.
- ✿ You might just want to avoid all the acrimony and cost on any divorce
- ✿ You are keen to protect assets you have inherited or given to you
- ✿ Your parents may be insisting on you to safeguard their inheritance
- ✿ You have heard that it may protect your assets and income on any divorce
- ✿ You just want to talk over with someone your concerns about protecting your finances from potential claims.
- ✿ You are in business and want to protect your interests

“I want to protect my assets...”

What is a prenuptial agreement?

They are also known as Pre-Marital agreement or Ante-nuptial agreements or for short they are known as Prenups.

It is a signed agreement dealing with various financial and other matters which the parties would like to happen in the event of separation or breakdown of marriage.

When should I enter into a prenuptial agreement?

As soon as possible but at least 42 days for the wedding.

Ideally the Prenuptial should be entered into around 6 months before any wedding date, to give time for both parties to reflect on the agreement and negotiate the terms. The courts prefer that the Pre nuptial is entered into long before the marriage. It shows to them that there has been sufficient time for the parties to get advice and more importantly less likely of duress or coercion and more likely to be accepted by the court in case any party tries avoid the agreement.

How much does a prenuptial cost?

There are a number of stages the solicitors has to go through with you.

- ✿ Find out why you are seeking this advice, find out what assets you wish to protect and to make sure he/she understands your situation fully.
- ✿ Get down all your financial information.
- ✿ Go through the current law on prenuptial agreements
- ✿ Go through the various provisions and ask you to consider the various scenarios of what may happen on any separation or divorce.
- ✿ Have another meeting with you to get your final instructions before the solicitor starts drafting the prenuptial agreement.
- ✿ Go through the draft agreement with you and the financial disclosure.
- ✿ Send the prenuptial to your partner/solicitors for them to review the draft.
- ✿ There may be some toing and froing to try and reach a meeting of minds and you may need to meet with the solicitor to discuss various amendments.
- ✿ Engross or finalise the agreement and execute it.
- ✿ Deal with the post-nuptial agreement.

Costs can range between £750 to £1500 plus VAT or more depending on the complexity and extent of the negotiations. But your solicitor should give you a good idea of the costs at the first meeting. But this should be compared to costs of between £10,000 - £15,000 of legal costs per party in a divorce and dealing with finances right up to trial.



How can I make the cost of a prenuptial agreement cheaper?

Before you meet your solicitor, have ready the following:

1. A broad idea of what you both want from the agreement
2. You should have a list of your assets and income with approximate values of properties, shares etc.
3. You should plan well ahead as it can cost more if you want a “rush job”.

I cannot afford to pay for the advice for the Prenuptial.

In certain circumstances, your partner could pay the legal costs of the other party to get advice from a solicitor, as long it is understood and stated in the agreement that this has happened and that the advice was completely independent.

Can we both come and see the solicitor to get advice about a prenuptial agreement?



Yes. But the solicitor could only give you generic advice. The solicitor could not act for both of you. If the solicitor sees you both first and thereafter one of you can choose to use the same solicitor, the solicitor may not be able to act if there is any conflict of

interest. However if the solicitor has only given generic advice and the other party is happy for him/her to act then as long it is recorded in the agreement and the other party has been given a chance to obtain independent legal advice then this should be acceptable by the court.

I do not want other people to come to know that we entered into such an agreement.

You can have a confidentiality clause inserted in the agreement. However this should exclude revealing the prenuptial to any legal or professional advisors.

“My parents want to give me a property, how do I protect it?”

I may have children but not now. How can a prenuptial agreement take this into account?

The purpose of a prenuptial agreement is to try as much as possible to make reasonable provisions and for future need. This means that thought is given to what would happen if there were children. So including such provision in the agreement will make the agreement more robust and resilient to court scrutiny and give the court a chance to consider such terms. It will all ways be subject to the discretion of the court, but at least you have something in writing that reflects both your intentions and the court cannot ignore this.

What happens if I or the other party commits adultery, will this count against me?

The short answer is no. Unless there is anything in the prenuptial which states that in such an event one party is to get more. This may be deemed as being unfair/unreasonable by the court. However, the issue may be brought up on any Divorce and financial proceedings.

What happens to Assets already owned on marriage or inherited? Can I protect this in a prenuptial agreement?

Such assets could include:

- (a) Any wedding presents given by that party’s family or friends,
- (b) Any assets subsequently received by that party by gift from a third party or by inheritance,
- (c) Any assets subsequently received from the other party as a present to mark a birthday, wedding anniversary or religious festival,
- (d) Any clothes, sports equipment and other personal possessions intended for his or her sole use subsequently purchased. You can specify a minimum sum.

(e) Any income derived from any assets.

“The presumption is that regardless of who paid for it, it is jointly owned”

You will need to decide what to do with such items on any divorce. You can take a broad brush approach. For example presents received from the other party given can be kept by the receiver. If a purchase is for the use of the family and whoever paid for it, remains jointly owned. This is dealt with more in the next question.

How does the law regard those things we buy either for each other or for the home?

If the payment came from one parties sole bank account it can be agreed that this belongs to the paying party. If one party has paid for it from a joint account, then it could be regarded as jointly owned regardless of the parties respective contributions. So you can pretty much agree how an item will be owned in any circumstances.

Please note that the more complex this provision the more proof you will need to show how it has been paid for and what contributions have been made to any joint account or purchase. So keep your written records.

What if one party gives gifts to his/her family; can that come from their respective share?

For example if one party sends money abroad to family members. This can be complicated to administer. The usual and simpler way of dealing with gifts to third parties is to agree that neither will give more that a certain amount. If a party does give more that the amount agreed say £500 then anything above this sum will be treated as being from them and taken out of their share.



I want to protect my property that I have brought into the marriage.

This is what most people want to protect. Please note that you can protect such assets in other ways too, which you should explore with your solicitor. This could include trust deeds and wills.

Such options could also protect assets where the monies have come from third party sources such as parents or parents have given the property to their children for tax planning purposes.

My parents want their investment protected is a prenuptial agreement a tax efficient way of giving away their assets.

If the transfer has already been made before marriage then it could be protected by a prenuptial agreement or a trust deed (but note that a trust deed could defeat the tax efficiency of the transfer so seek good tax advice).

Mr Hancock or Mrs Zoller at Garner & Hancock can advise you on this further. If the transfer is made post marriage it may be more difficult to protect if you do not have a prenuptial agreement. This scenario also included inheritances receive post marriage.

When does a marriage come to an end?

Well, this may sound like a strange question but this relates to working out when both parties regard their separation to have begun. As this in turn will determine when the prenuptial agreement will kick in. It can be defined in the prenuptial agreement; It could be when one party writes formally. It may even be a period of living apart. But it is important to agree this in advance to avoid confusion later.



Can I specify in the prenuptial agreement as to how the divorce proceeding may be conducted by either party?

The answer is an emphatic yes. The purpose of a prenuptial agreement is to think of all the scenarios and cover them in the agreement to avoid later confusion and acrimony and of course the inevitable large legal costs of resolving these matters. Dealing with issues such as who is going to deal with the divorce and who is going to pay for it, will very much help ease one of the most difficult issues which parties grapple with during a breakdown.

One way to avoid any potential litigation even with a prenuptial agreement is to agree to first attempt mediation before any party institutes court action.

I do not want my partner to make any claims after my death

This depends if you are still married. In such cases this may be more difficult and you should seek advice from Mr Hancock and Mrs Zoller at this firm.

This can be provided or in any prenuptial that such claims cannot be made. But if parties have children then such claims cannot be avoided under section 2 of the Inheritance (Provision for Family and Dependents) Act 1975.

Do I need to make provision for my future spouse in a prenuptial agreement?

When approaching a prenuptial agreement the following should always be borne in mind.

“The fairer the agreement the more likely the courts will uphold it”

So for example if one party has brought in all the assets and the other has limited assets then it would be seen as reasonable to give the other party some capital or money in any divorce. Such a “sweetener” will also ease the potential acrimony and even avoid a party looking to try and overturn such an agreement in the courts.

This could be as generous as giving them a home for a short while to live in or to giving providing funds to find themselves a home. However, the courts will look at the financial background of the parties at the time of entering into the agreement and you would of course have to be confident that the party with the money will still have it at the time of any divorce. So perhaps being on the safe side you might consider a percentage of any asset. The solicitor advising on the prenuptial agreement can explain and go through various scenarios and provisions which will suit your needs.

Why do I have to see my partner’s financial documents and confirm that I have seen such documents in a prenuptial?

You have to confirm in the prenuptial agreement that you have had a chance to see the other party’s finances, not just a list which has been produced and is usually attached to the agreement but actually see confirmation of such assets. The reason for this is that you have to be satisfied that the party has these assets so that your solicitor can agree the best and most suitable agreement for you. If you suspect you have not seen everything, be brave and say that you have not had a chance to see the documents.



Do I have to reveal all my finances to my partner?

If you do not disclose all your assets or source of income then you could potentially expose the prenuptial agreement being ignored by the court, if the matter comes before the court.

Can my finances be kept secret from anyone else?

Yes, you can have a confidentiality agreement. But if she were to reveal this information to anyone then you can only bring this up at the time of any divorce. However you may be able to take out an injunction to prevent any further disclosure.

I want a prenuptial agreement, but I do not know how to bring up the subject.

Such subjects are often delicate and emotionally tied. These considerations are usually at a time of great stress with wedding plans and family pressures. In my experience I give the following tips.

1. Such discussions are sometimes prompted by the intention of protecting assets which have been given to you or protecting assets handed down to you by family. So use the family as a reason to explain why it is important to have such an agreement in place.
2. Such discussions should be straight forward and hidden agendas are not a good idea. It should be frank, sincere and cards on the table.
3. Like with any discussion which involves money or assets, it should be done in a neutral setting, at a neutral time. For example not at a time when so much is going on.
4. Such discussion are a great skill and being brave about such matters will also give both of you a skill set that you can use later to grapple with uncomfortable subjects.



5. Before broaching the subject of any prenuptial, it first best to obtain advice from a solicitor, who will help in work out what your priorities are and the issues which you need to think about. You may either see a solicitor together, although there are certain rules that the solicitor has to be aware before seeing you both, which I have discussed above or else have two separate solicitors. Such initial advice will clear the air and give the parties an opportunity to listen to what prenuptial agreements are, rather than fear them.

Where do I find a specialist firm which deals with Prenuptial agreement?

The first is to find a member who is a member of Resolution. www.resolution.org.

Members of Resolution are experienced family practitioners who both have a wealth of knowledge but also have a code of practice which reduces costs and acrimony between the parties. They are trained to high level and most of the work load is such family cases.

The next is to talk to the solicitor on the phone. You need to feel right about someone whom you are going to confide in. If a solicitor does not come on the phone, he/she may not have time to deal with your case. If the solicitor simply tries you to commit to a meeting and not give general advice over the phone, then that solicitor may not be right either.

Do I need to do anything further after I have signed the Prenuptial agreement?

You should ensure there are two originals also called counter parts and copies held with your will and with the solicitor who drew up the agreement (although solicitors

do not have to keep your file for more than 6 years). Ask if this can be kept separately, there may be a small fee for this.

Do I have to enter into any further agreements after the prenuptial agreement?

Ideally yes. You should ensure that both parties confirm the contents of the prenuptial agreement by way of a Post-Nuptial Agreement. Your solicitor will draw this up for you.

Why do I need a post-nuptial agreement?

What is the difference between a prenuptial and post-nuptial agreement?

It shows to the court that the agreement was not something that has been entered into without proper consideration. Further, that it may persuade someone looking at the agreement that there had unlikely been any direct or indirect coercion. It also gives the prenuptial agreement a sort of seal of approval once the pressures of the wedding have gone. It gives the court more confidence in the agreement.

What form does this Post Nuptial agreement take?

It can be simple or it can add further information or record any changes since the prenuptial agreement.

Does the post-nuptial agreement need to have independent legal advice?

Yes. The same conditions apply as to the prenuptial agreement.

Can I make an agreement about my finances whilst I am married, but I do not have a prenuptial agreement?

It is public policy that parties entering into such post martial agreement as regarded as void, unless it confirms a prenuptial agreement.

Simple, they are seen as to have a presumption of potential duress and unequal bargaining power. Court would regard such agreement with extreme suspect and caution.

However, we would recommend that this is done anyway as it records parties intentions. But it is unlikely to be considered by the court. Although, if safeguards like independent legal advice were introduced then courts could be persuaded to at least look at the agreement.

I have recently seen a lot of court cases about Prenuptial agreement how does this affect me?

More recently, the prenuptial agreement has been given a recognition that it has never before received in the history of Matrimonial law in the English jurisdiction. In the case of **Granatino v Granatino** also known as **NG v KR (prenuptial contract)** a Husband from France had entered into a prenuptial agreement with his Wife from Germany. Both countries jurisdictions give legal status to the prenuptial agreement, but the marriage itself took place in the jurisdiction of England and Wales. The parties entered into a prenuptial agreement which specified similar terms to that of the one in **Crossley v Crossley** (above) with the exception that the contract specifically provided that any assets or income accrued by either throughout the course of the marriage, would remain owned by that party. The husband was shown a draft of the agreement a week prior to the wedding, and did not seek legal advice and there was no disclosure of any of the Wife's assets. See our comprehensive article at [Garner & Hancock Prenuptial Article](#)



Should I get a will drawn up whilst I am considering a Prenuptial agreement?

It is best to have a will drawn up. It is best to review a will at the time of marriage as any will should fit with what you have said in the prenuptial agreement. See Mr Hancock or Mrs Zoller about further advice on this and efficient tax planning.

This Guidance as been produced by Vinay Tanna, a partner at Garner & Hancock

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Garner & Hancock is an established firm in west London and south west London, covering the area of Richmond to Brentford and Hounslow to Chiswick.

Our Solicitors and executives are experienced in Property, Tax and of course Matrimonial Law.

Garner & Hancock is member of Resolution.

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