

Prenuptial Agreements

Can a Prenuptial Agreement help you?

There are a lot of myths about what a prenuptial agreement ("prenup") is and who uses them. Prenups have far more uses than simply protecting the assets of a wealthy individual. Prenups can be used to:-

- Protect a party's assets
- Protect a party from assuming the debts of the other party
- Determine how property will be passed upon death
- Clarify financial rights and responsibilities during a marriage
- Avoid long, costly, disputes in case of divorce.

If you don't get a Prenup

Absent a prenup, the law will determine how property is handled during and after marriage. The law will dictate how your spouse is entitled to:-

- Share and receive ownership of property acquired during the marriage
- Receive some of your property upon death
- Share in any debts acquired during the marriage
- Share responsibilities in managing property acquired during the marriage

There are many good reasons to deviate from the way the law determines those matters. For instance, if you have children from a previous marriage, upon your death you may want your property to pass to your children rather than transfer to your current spouse. The advantage of prenuptial agreements is that you can craft them to meet your particular needs.

Creating a Valid Prenup

Until relatively recently prenuptial agreements were not looked upon favourably by judges because they were traditionally used to protect a wealthy individual from a partner with substantially fewer financial assets. The fear was that the poorer spouse may be coerced to sign and that such agreements encouraged the dissolution of marriages.

Today, however, prenuptial agreements, divorce and remarriage are more widely accepted. In addition, women are considered to have a more equal place in society and require less protection from the court.

The Courts will analyse prenups with a careful eye so it pays to get it right and create a prenup that is clear, understandable and justifiable. If a judge decides that your prenup is unfair or doesn't meet certain requirements, the agreement will be set aside. To avoid such pitfalls, both parties should take independent legal advice from an experienced lawyer who can advise them on their rights and review the prenup to ensure it complies with local law.

How to determine if a Prenuptial Agreement is right for you

Whether or not to enter into a prenuptial agreement is a very personal decision. Each individual and couple is unique. You should base your decision on your own circumstances. Review the pros and cons of prenuptial agreements and then read through the steps below to help you decide if a prenuptial agreement is right for you.

Pros of a Prenuptial Agreement

Some of the benefits of a prenuptial agreement include:-

- Documenting each spouse's separate property to protect it as such
- Distinguishing between what is marital and what is solely owned property
- Documenting and detailing any special arrangements between you and your spouse
- Avoiding extended court proceedings and reducing conflicts during a divorce
- Establishing procedures and rules for issues that may arise in the future, and
- Assigning debt such as credit cards, personal loans and mortgages to the appropriate spouse to avoid both spouses sharing debt liability

Many people fear that discussing these matters, or even bringing up the words "prenuptial agreement", will upset their relationship. Often just the opposite is true. One of the main causes of the breakdown of a marriage is the issue of finances. Talking to your spouse about finances, property and marital asset management can avoid a lot of these disagreements. Agreeing matters in the beginning means that the issue is less likely to arise and cause an argument later.

Furthermore, discussing these issues nurtures healthy communication. Even if you and your partner decide a prenup is not for you, discussing the mentioned issues is a very good idea.

Cons to the Prenuptial Agreement

Although a prenuptial agreement has many benefits there are some downsides that you should consider before creating one.

It's not romantic. If you fear that discussing a property and finance distribution and the possibility of a separation or divorce will dull your relationship in some way, then a prenup may not be right for you.

The timing may not be right. The beginnings of a marriage are typically a time of marital bliss, when many of the issues involved in a prenup are not even a thought. You may be at a point in your lives where you do not yet know the answers to some of the issues in a prenup. The truth is these issues will come up eventually, whether during the marriage or if you divorce. If you think the timing for discussion of these issues is bad, or you just don't have a basis for formulating decisions or answering questions, then the timing may not be right for you.

A Court can set aside any provisions it finds to be unfair or set aside the agreement if it has not been negotiated and concluded properly.

Prenuptial agreements are designed to address financial issues, not personal matters such as the division of labour in a marriage.

You can not foresee all the issues that may arise during the course of a marriage.

Take this Prenuptial Questionnaire

1 Do you own a house?

Yes No

2 Aside from a house, do you have more than £50,000 in assets?

Yes No

3 Do you earn more than £75,000 a year in earned income?

Yes No

4 Do you own any part of a business?

Yes No

5 Do you have an established pension pot?

Yes No

6 Do you have employment benefits such as share options, profit sharing or death in service benefits?

Yes No

7 Do you or your partner plan to work and the other does not?

Yes No

8 Does your will name beneficiaries or heirs other than your partner?

Yes No

If you or your partner answered yes to one or more of these questions then a prenuptial agreement may well be in your best interest. If you answered no to all of them, a prenup is probably not needed, but could still be used to protect your current or future assets.

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Deciding Important Property Issues

Once you have decided that a prenuptial agreement is right for you, you need to decide what to include in your prenup. Your partner and you should each separately brainstorm and write down all of the property issues you want to include in your prenuptial agreement. Here is a list of some common prenuptial topics to help you.

- Estate planning issues, for example, conveying family property or providing capital for children from previous marriages (not child support)
- Separate business
- Retirement benefits
- Distinguishing separate and joint property
- Debt allocation
- Distribution in the event of divorce, including maintenance payments
- Income, deductions and claims for filing your income tax returns
- Management of household bills
- Management of joint bank accounts, if any
- Arrangements regarding investing in certain purchases or projects, like a house or business
- Management of credit card spending and payments
- Savings contributions
- Property distribution to the survivor, including life insurance, in the event of death
- Settlement of potential disagreements, such as using mediation or arbitration

Deciding whether to proceed

Once you have thought about whether you need a prenuptial agreement and what issues should be covered in your prenup, evaluate how comfortable you are with the idea of having a prenup.

Many people fear discussing the idea of a prenuptial agreement with their partner might upset or offend their partner. The fact is that the issues covered in a prenup will have to be discussed with or without a prenup. Perhaps practising discussing difficult topics can start with the topic of a prenuptial agreement. Be upfront and honest with your partner.

Tell him or her that it is a difficult topic but that these issues do have to be discussed and decided on and can be done in a respectful manner. Some people even use a third party professional to help them sort through these issues in a loving way. Alternatively, if you don't want a prenup, but your partner does, use this opportunity to practice discussing difficult topics that are important to the relationship in a loving and non-threatening manner. Whether you decide on a prenup or not, it will be a great communication tool and will teach each of you what the other needs and wants.

If ready to discuss the details of your prenup with your partner remember that your partner may not be as comfortable as you are. Be sympathetic to that. Also, remember that the two of you will disagree on some things, but that this is okay. Talk it out. Give yourselves plenty of time and be willing to seek help if you need it. Doing this may help you decide more or less on whether a prenuptial agreement is the right thing for you and your relationship.

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Changing your Name after Marriage

It is a commonly held belief that a woman must legally change her last name to her husband's last name. This is not the case. She is free to keep her own name, hyphenate her name with her husband's name, take her husband's name or come up with a completely different name. If the couple agrees, they can even adopt the woman's last name. As long as the name change is not done without any intent to deceive any of these options would constitute a legal name change. Before considering changing your name after marriage be sure you are happy with whatever name you choose.

Changing your name after marriage to your husband's last name

Changing your name after marriage to your husband's last name is quite easy. All you have to do is begin using that name. Use your new name in social settings, with family members, when you notify of a change of address and to open new accounts and memberships. Notify your bank and other companies you have accounts with of the name change. Most places are pretty amenable to this, but because of the threat of identity theft and fraud, many financial companies require documentation, confirming your name. Your marriage certificate should suffice.

In addition to your bank be sure to change your identification documents such as your passport, social security card and driving licence. To change your identification documents you will again have to present your marriage certificate. In the unfortunate event that you divorce, you have the freedom to change your name back to your former name after the divorce.

Changing your name after marriage to something other than your husband's last name

Changing your name after marriage to something other than your husband's name is, as mentioned, completely acceptable. It requires more than just the marriage certificate, however. You will need to register a Deed Poll before the Royal Court. The process is very simple and inexpensive.

Who to Notify

Entities to notify of your legal name change include:-

- ✓ Employers
- ✓ Schools
- ✓ Post Office (via change of address form)
- ✓ DVLS
- ✓ Social Security
- ✓ Banks and other Financial Institutions
- ✓ Income Tax Department
- ✓ Insurance Companies
- ✓ Parish Hall
- ✓ Passport Office

**Contact us for a discreet appointment
on 875875 or visit www.benestisyvret.com**

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