



Tony Foss  
Solicitor



Rachel Shoheth  
Solicitor



Anne Shears  
Solicitor

## **Prenuptial agreements**

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### **What are they?**

Written agreements made between a couple prior to their wedding or civil partnership setting out their intentions regarding their finances and other arrangements during their marriage and what should happen when one of them dies or if the marriage breaks down.

### **Who should have one?**

Traditionally a pre-nuptial agreement was entered into where there was a great difference in what each person was bringing to the marriage in terms of wealth. It was used as a shield against the possibility of someone (commonly termed a 'gold digger') marrying a very wealthy person with the intention of divorcing them later to obtain a share of their wealth.

Nowadays they are far more common. This is partly due to our evolving society. Many have been through an unsuccessful marriage and wish to have greater protection, or at least clearly stated intentions, this time around. Also people are marrying later in life with more personal possessions and assets to protect. It is also partly due to greater independence and education in matters that, in the past, many entered blindly.

### **What is in one?**

Each pre-nuptial agreement should be carefully tailored to your individual circumstances. However, it is usual to include the following:

- agreement that you each retain any property or assets you own in your own name prior to the marriage and that the other party will not have any claim on that property.
- arrangements for any home you are intending to buy. Details would include what share in the property each of you will have and the contributions each of you will make to the running of the home, financially or otherwise.

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- what will happen to any items purchased jointly by you after your marriage.
- what will happen if one of you dies. For example, that the survivor will not be able to make any claim against the deceased's estate.

### **But aren't they a waste of time?**

It is true that a court in England and Wales does not have to be bound by the terms of a pre-nuptial agreement: it is free to disregard its terms in whole or in part. However, providing it is properly prepared, the court will carefully consider the terms of any pre-nuptial agreement. And the current trend is for the court to give them more weight, in some cases declaring them to be highly influential when deciding upon the division of assets on divorce.

### **How do I go about getting one?**

To make sure you have the best chance of the court adopting or closely following the terms of the pre-nuptial agreement it is essential that it is properly prepared and carefully worded to ensure your intentions are clear. There are many mistakes that can be made which would result in the agreement carrying no influence with the court at all. For instance:

- Both people signing the agreement must get independent legal advice, i.e. each must have advice about the proposed agreement from different solicitors.
- Both must fully and honestly disclose all of their financial interests.
- Both must sign the agreement freely, without threat or duress.
- The arrangements set out in the agreement must be within the bounds of what the court would consider to be 'fair and reasonable'.
- The agreement must be signed a reasonable time before the marriage. Current government proposals have recommended a time period of at least 21 days before the wedding. This is to avoid the suggestion that one party could have been put under pressure at the last minute.

If you would like to know more about pre-nuptial agreements please contact Tony, Rachel or Anne or visit [www.gardandco.com](http://www.gardandco.com).

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