



# **Pre-nuptial agreements**

## **Our top tips**



Teelan & Silwal  
FAMILY LAW

## Pre-nuptial agreements: our top tips

### Setting up your pre-nuptial agreement

As you may be aware, pre-nuptial agreements (“pre-nups”) are not automatically binding. It is likely, however, that the Court will follow and implement a well drafted pre-nup. As the case of *Radmacher v Granatino* [2010] tells us, there is a 2-stage test that the Court will apply, being:

1. The agreement must be fair and entered into fairly (see below); and
2. It must not be unfair to hold the parties to their agreement in the circumstances prevailing at the time of the divorce.

Please note that any reference to a pre-nup also refers to a pre-civil partnership agreement.

In order for the Court to give appropriate weight to your pre-nup, here are some practical steps you can take when setting up your pre-nup, in line with the key factors above, i.e. to make it fair and entered into fairly:

- a. Each party needs to receive independent legal advice about the pre-nup from the outset;
- b. The agreement must be entered into at least 28 days before the marriage or civil partnership;
- c. Full and frank disclosure of both parties’ assets needs to be made prior to the pre-nup. If some assets are not disclosed, this can impact the enforceability of the agreement;
- d. The parties must not put any kind of pressure or duress on one another which could result in the party signing the pre-nup against their will;
- e. The terms of the pre-nup must be fair and just. If the division of the assets is unrealistic and too heavily in favour of one party, then it could be considered an unfair agreement and not followed by the Court.

### Points to consider

Whilst you may think that bringing up the pre-nup discussion with your spouse-to-be is the least romantic start to your marriage, where your assets are involved, it is important to set your feelings aside and think with your head, rather than your heart.

You need to discuss the topic sooner rather than later. You both need to have enough time to consider the terms and negotiate, if necessary. Do not leave it until the very last minute because you will already have enough to think about as your wedding day approaches! A rushed pre-nup is less likely to be upheld by the Court.

Pre-nups are not only to secure the assets of the ‘wealthier’ party. Having this agreement in place should benefit the both of you and can address financial responsibilities regarding debt, monetary gifts received from outside of the marriage and future inheritance prospects. You may for example wish to preserve assets for the children of your first marriage. Please remember that a Will has a totally different function and will not protect assets on divorce.



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In fact, many people who have not had a pre-nup before their marriage still enter into post-nuptial agreements during the marriage, but this is a topic for another day.

### More information

If you have any queries about pre-nups or wish to enter into one, please contact an experienced legal professional. Here at Teelan & Silwal we specialise in all aspects of family and matrimonial law, and a member of our team can advise you throughout the process of making a pre-nuptial agreement.

