



# Roses are red, violets are blue, but are you ready to say “I do”? – The latest on prenuptial agreements

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Valentine’s Day is one of the most popular days to get engaged; 220,000 is the average number of wedding proposals on Valentine’s Day each year. But what else should be considered ahead of the big day on top of the venue, photographer and cake? A prenuptial agreement (prenup)?

## What is a prenup?

A prenuptial agreement is a form of contract made between a couple in anticipation of their marriage or civil partnership, which deals with how their assets are to be treated in the event of divorce or dissolution. For many the idea of planning the divorce before the marriage is unthinkable.

## Who are prenups for?

Prenuptial agreements are no longer simply for the multimillionaires; more and more couples with more modest incomes and assets are seeing the benefits of prenuptial agreements. Prenups can also be particularly worthwhile on second marriages or civil partnerships where assets have been accumulated prior to the marriage or civil partnership and there is a wish to secure/protect them for the benefit of existing children. For example, assets acquired through inheritance or your own endeavours or where there is the prospect of future wealth which you may wish to retain within the family.

## Are prenups recognised by law?

In 2009, the Supreme Court’s decision in the [Radmacher v Granatino](#) case opened the door to prenuptial agreements. Although not strictly enforceable in England and Wales, prenuptial agreements are attracting judicial attention. Recent case law decisions have shown that the courts are increasingly willing to recognise and uphold prenups as evidence of the parties’ intentions. Of course, every case is different but the family court and the Law Commission have suggested that if certain guidelines are followed your prenuptial agreement is more

likely to be taken into account.

## **Prenup guidelines**

The guidelines recommend that:

- The agreement should be signed at least twenty one days before the proposed date of the marriage or civil partnership ceremony, and preferably earlier.
- Both parties should provide full financial disclosure.
- Each party should receive separate and independent legal advice and this is recorded in the agreement.
- Suitable financial provision should be made in respect of any children, either already born or in the event that any are born in future.
- The terms should be fair both at the time the agreement is entered into and should be reviewed regularly to ensure that they remain fair.
- The terms of the agreement must be such that it would be enforceable as under the general law of contract.
- Both parties must sign the agreement willingly and without pressure or undue influence from any other person.

The family court ultimately retains jurisdiction and can overrule any agreement, but the court's approach is to attach weight to a prenuptial agreement unless implementing the terms of the agreement would be unfair for one or both spouses.

## **What are the benefits of having a prenup?**

Although the popular perception is that prenuptial agreements are unromantic, it is better (and far more practical) to reach an agreement before the relationship has broken down. A good prenuptial agreement will reduce litigation and provide certainty in circumstances where the divorce court otherwise has an extremely wide discretion to redistribute assets at the point of divorce.

A prenuptial agreement can be viewed as a form of insurance policy. You hope not to have to use it, but if the worst happens and you need it, it is there – just in case.

## Need more advice?

For further information, please head over to our [prenuptial agreement](#) page. Alternatively, you can contact a member of our friendly [family law](#) team who can advise you on the best way to proceed with a prenuptial agreement that is tailored to your needs.