

Talking about prenups

How to protect your financial assets and your relationship



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Popping the question?

If you're considering a prenuptial agreement, it may help to know what's involved in the process.

Engagements are a time of hope and excitement, which is why discussing a prenuptial agreement with your partner can be tricky. Yet more and more couples are doing so. There are many reasons why: one or both parties may have built up substantial wealth or stand to benefit from an inheritance. It may be at the request of family, trustees or shareholders. Or they may see it as a way to plan their finances.

Whatever your circumstances, prenups (along with pre civil partnership agreements and postnuptial agreements) can save a lot of stress, heartache and legal fees if the worst should happen. While they are not yet legally binding, since a Supreme Court ruling in 2010 the presumption is now that family courts will uphold nuptial agreements if they are fair and both parties fully understand the implications.

So what happens if you decide to get a prenup? First of all, you'll need to speak to your partner. It's a good idea to do this early because it can take anything from a few weeks to several months to draft an agreement, which ideally should

be signed no later than 28 days before the wedding.

Next, you will both need independent legal advice: look for a lawyer with strong experience of nuptial agreements, with whom you feel comfortable. He or she will be able to help you to create the right style of agreement for you.

When it's time to draft the prenup, you will each need to make clear your financial position (the agreement will not work unless financial disclosure is correct). Considering your future plans – such as where you will live, or if you're likely to have children – will help you to tailor the document to your situation. At Withers we often use a collaborative approach to prenups, where a couple and their lawyers get together and talk things through. Or those who prefer not to discuss the details directly can 'leave it to the lawyers' to negotiate.

Once agreed, the prenup can be filed away and hopefully forgotten. 'I'm very glad we finalised the agreement,' says one Withers' client, 'and equally pleased we haven't discussed it since signing!'

How to talk about prenups

The Withers' family team have advised many clients on pre and postnuptial agreements. Here are their tips on broaching the subject.

1 Introduce the idea early
For Suzanne Kingston, who is a trained mediator, it's never too soon to talk about prenups.

Much as you would expect to discuss whether you intend to start a family, or where you'd like to live long term, 'it's less stressful if you normalise the idea from the outset of your relationship,' she says.

Ideally you would raise the topic before proposing, but if you're already engaged, bring it up as soon as you can, before starting to plan the wedding.

2 Use friends as examples
'If friends or acquaintances mention that they signed a prenup, making reference to their situation can make the idea seem less alien,' says Michael Gouriet who regularly advises on prenups, especially for families who have estates which have passed down through generations. 'As prenups have become more common in the past few years, we've found the conversation is not as hard because people will often know someone who has one.'

3 Choose your moment
Find a time when your partner is in a good mood, and you have time to talk things through properly. 'Choose a neutral location, perhaps when you're going for a walk or having dinner,' suggests James Copson, a partner with extensive experience of negotiating prenups.

4 Be straightforward
Your first concern may be to avoid upsetting your partner. But being straightforward is always the kindest approach, says Julian Lipson, head of the Withers' family team: 'I don't think beating around the bush is wise. Be clear, speak kindly, get it done and then you can forget about it.'

5 Plan together
A frank talk about the future can strengthen you as a couple, suggests Katharine Landells, who believes that strong marriages are built on communication. 'The right outcome will be different for everyone, so don't be afraid to raise what you think would be fair in different scenarios, such as if you have children or move abroad, or if one of you comes into an inheritance.'

6 Show it's not personal
Often it is not the individual themselves who is suggesting a prenup agreement. Explaining this makes the conversation easier, says Claire Blakemore, who frequently deals with prenups involving trusts. 'More and more trustees are advising beneficiaries to consider prenups. If the same requirements apply to everyone who marries into your family or to all shareholders in private companies, it shows that nobody is being singled out.'

7 Focus on fairness
Try to keep your initial talk to broad principles on which you can both agree. 'Where there is a big financial disparity between partners, it's a no-brainer to get a prenup,' says Julian Lipson. 'Many people accept it as fair that wealth acquired before a marriage, or inherited from family, should be protected.'

8 Offer to cover costs
If you are the financially stronger party, helping your partner to get legal advice shows that you intend to meet their needs. 'Courts will only uphold a prenup if it's fair, which

means that all parties need to be well advised,' says Brett Frankle, who helped a husband uphold the French prenup he had with his wife'.

9 Talk the same language
Suzanne Todd, who has many clients from Italy, where marriage contracts are common wealth planning tools, finds that they have less difficulty discussing the idea. 'If you or your partner are international citizens, it may be helpful to talk about the marital property system in your home country. A prenup can help you to recreate that, or adapt it to suit your circumstances.'

10 Treat it as insurance
You can explain the need for a prenup in terms of insurance. Diana Parker, who has represented many high-profile clients says 'You insure against burglary not assuming that bad things are going to happen, but to make things as painless as possible if they do.'



'I came right out with the subject'

Alexis Saint, property investor

'My fiancé and I talk a lot about our future and how to grow our financial security. But before we marry we will be signing a prenuptial agreement that what I have now is mine, and what we earn together going forward, we share.'

'I've spent years building a property portfolio that is my main source of income and hopefully my pension. I don't want to find myself in a vulnerable position if things don't work out.'

'We have a very candid relationship so I came right out with the subject one day while we were out for a walk. I blurted out something like, 'I think we should get a prenup'.'

'My fiancé showed a flash of surprise, but he made it clear that he understood. I think it's important that the other party sees you have their interests at heart too, and you're committed to building a strong future with them. He knows that the prenup isn't just about me jealously guarding my wealth.'

'It's never been mentioned again'

Mariano Ruiz, fund manager

'I introduced the concept of a prenuptial agreement early, before my wife and I were engaged, to give her several months to digest it.'

'The way I explained it was as a way of replicating the matrimonial property system in continental Europe. We live in London for professional reasons but I find the law here unfair. I saw a prenup as a way to avoid stress and legal bills if the marriage should break down.'

'My wife agreed without any difficulty. Our financial situation was unbalanced, but the first draft she received was fair. She came back with one request on the advice of her lawyer, and I agreed immediately.'

'Other than that, we didn't discuss the prenup ourselves. For me, direct negotiation is too abrupt, too much: it could put strain on you as a couple. This is just something that you do, sign and never look at again. We've been married for two years and the subject has never come up since.'

If you would like to talk to us, please get in touch.

t: +44 20 7597 6364 e: family@withersworldwide.com

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