gunnercooke

SWINDELLS
FINANCIAL PLANNING

Are prenups worth it in England and Wales?

Amy Lane, Private Client Partner, and Katie Stewart, Family Law Partner, at gunnercooke.

According to the ONS, fewer of today's generation are getting married or forming a civil partnership, choosing instead to combine assets and families without formalities. As a result, there has been a trend towards looking at other ways to protect assets. For parents, this can include incorporating trusts into their Wills and estate planning. Cohabiting couples might consider entering into a Cohabitation Agreement or a Declaration of Trust when purchasing a property.

Finally, for those who do decide to get married or form a civil partnership, more are turning to having a pre-nuptial agreement and, sometimes, a post-nuptial agreement.

What is a pre-nuptial agreement?

It is a written agreement entered into before marriage. It records how the couple intends their assets, liabilities, income and financial responsibilities to be dealt with if they separate or divorce. The agreement cannot currently prevent either spouse from applying to the court for financial orders on divorce. It also cannot displace the court's responsibility to consider the couple's circumstances, including their financial needs and the welfare of any children. However, it can provide important evidence of what the couple intended and agreed before marrying.

Are they legally binding in England and Wales?

No. However, the courts are likely to give substantial, and often decisive, weight to a properly prepared and signed agreement. The circumstances in which the agreement was prepared are therefore important. Both parties should provide sufficient financial disclosure, receive independent legal advice and have enough time to consider the proposed terms. It should also be considered fair to both parties and should factor in possible changes of circumstances, such as the birth of a child. The agreement should be completed well before the ceremony.

The Government has recently consulted on proposals which include introducing qualifying nuptial agreements, which could become legally binding if the reforms are taken forward.

So, why are they becoming more common?

In today's world, people are more financially independent. Not only that, but quite often with entrepreneurs, or those who have set up a potentially lucrative startup company, protecting your hard work can be one of your main priorities. The benefit of the agreements is they can be used in tandem with other documents, such as Declarations of Trust and your Wills.

They are also more common with second marriages, particularly where there are children from previous relationships. In addition, it is quite common for second marriages and relationships to take advice about asset protection on separation (such as a Cohabitation Agreement) and on death. For instance, couples quite often want the survivor to continue living in the home they bought together (or which is in one person's sole name) but they ultimately want the asset to revert to their respective families. This is where your Will becomes a crucial document.

I am planning on making a gift to my child, but I want the gift protected. How can I do this?

Before funds are transferred, it is important to establish whether they are intended to be a gift to one person, a gift to the couple, a repayable loan or an investment giving the family member an interest in the property. Without clear documentation, disagreements can arise later about the purpose of the payment.

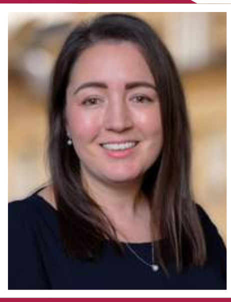
A pre-nuptial agreement can record that a parental contribution, or the proportion of the property attributable to it, should remain with the spouse whose family provided the money. However, depending on the arrangement, a Declaration of Trust may be recommended too, as the document can also record other matters such as what happens to the property on sale or death, and give a first right of refusal should one party want the property to be sold.

If you are concerned about your estate being paid to a child after your death and, in particular, concerned about their partner, this is where your Will becomes a crucial part of your planning and you may want to consider the different structures available.

Conclusion

So, is having a prenup in the UK worth it? Potentially, it depends on your reasons and your family's objectives. The key is to not leave things to chance if you have concerns and to take advice in good time about the ways in which estate planning and family advice can support your family now and in the future.

For more information, or if you need expert legal advice, please contact Amy Lane or Katie Stewart.



Amy Lane
Partner, gunner*cooke*
Visit profile

Katie Stewart
Partner, gunner*cooke*
Visit profile