

Divorce myth: Prenups are not worth the paper they are written on



A prenuptial agreement is an agreement that a couple can enter into before they marry, which sets out what will happen with their financial affairs, should the marriage ever break down.

You may have formed your own view of prenuptial agreements ('prenups') from the accounts in the press of celebrities and wealthy couples going through a divorce. Reference to such agreements in such cases are certainly more prevalent than ever before.

Many people think that prenuptial agreements are not worth the paper they are written on. This is certainly not the case.

This belief stems from the very correct assumption that, at this point in time, prenups are not automatically legally binding. This means that the judge will ultimately have the final say in relation to how assets are distributed between the parties on divorce. That being said, a prenup into which two consenting people have entered, and which is fair, will be a persuasive factor to a court in determining the asset split. The court will have regard to the terms of the prenup, unless it would be unfair to do so.

Of course, there are some safeguards which the court will expect to have been followed. A 'prenup' written on the back of an envelope the morning of the wedding will be far less persuasive to a judge than a document negotiated between the parties with the assistance of their lawyers and signed a few weeks before the nuptials.



What should a prenup include?

If you want to avoid the prenup not being worth the paper it's written on, it is essential that any prenup makes provision for the needs of both parties to the marriage. A prenup which says that one spouse will keep their multi-millions and the other will receive nothing is likely to be worthless. This is especially the case if there are children involved. However, provided a prenup considers the needs of all involved and makes appropriate provision (this does not need to be generous), then prenups can be an important financial planning tool.

Well-drafted prenups can save a considerable amount of time and expense in the event of divorce. They are very much worth the paper they are written on, provided they are well prepared and proper protocols are followed.

How can we help

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