

## Prenuptial and Cohabitation Agreements

In England, prenuptial agreements and cohabitation agreements are legal instruments that individuals can use to outline their financial arrangements and obligations before entering into marriage or cohabitation. However, it is important to note that while these agreements are recognised, they are not automatically legally binding.

### Prenuptial Agreements

Presently, if the total assets you leave that are subject to IHT exceed £325,000, then the excess (subject to any of the reliefs outlined below) will be taxed at 40%. A reduced rate of IHT of 36% applies where 10% or more of a deceased's net estate, after deducting IHT exemptions, reliefs and the nil rate band, is left to charity.

A prenuptial, or pre-civil partnership agreement (often called a "pre-nup" or "premarital agreement"), is a contract entered into by a couple before marriage or civil partnership. It typically outlines how their assets, debts, and other financial matters will be divided in the event of a divorce or dissolution.

Although not the most romantic of solutions, pre-nups are worth considering if:

- one of the parties wishes to protect family wealth;
- there is a wish to ensure that inheritance or gifts stay in the family for future generations;
- either party wants to protect assets acquired before marriage;
- there is a need to protect a business;
- there is a great inequality of wealth between partners;
- there is a wish to protect funds for children from a previous relationship; or
- the parties want to avoid lengthy legal battles, although the pre-nup does not always guarantee a faster resolution.

Pre-nups are not binding on the courts, but they are increasingly persuasive as they are seen as evidence of the parties' intentions. The court retains its ability to change the terms or override the agreement if the effect of the agreement is deemed unfair. However, a prenuptial agreement can have a major influence on financial provision.

Courts may give them weight if certain conditions are met, such as:

- **Full Financial Disclosure:** Both parties must provide full and honest disclosure of their financial situation.

- **Independent Legal Advice:** Both individuals should seek independent legal advice before signing the agreement.
- **Time:** The agreement is entered into at least 21 days prior to the marriage.
- **Changing Circumstances:** The agreement should provide the possibility to be reviewed in the event of a change in circumstances such as the birth of a child.
- **Fairness:** The agreement should be fair and not leave one party in a significantly disadvantaged position.
- **No Duress:** The agreement should not be signed under duress, and both parties should enter into it voluntarily.

Even with a prenuptial agreement in place, a court has the discretion to override it if circumstances have changed, making the agreement unfair.

Prenuptial agreements often contain clauses relating to:

- **Property and financial separation:** These clauses protect each spouse's separate property from becoming joint property and protect one spouse from the other's debt.
- **Spousal maintenance, or alimony:** This clause determines the level of support owed to a spouse if they divorce.
- **Division of responsibilities:** This clause establishes the responsibilities of each spouse during and after marriage.
- **Child inheritance:** If one of the spouses was in a prior marriage, these terms would ensure that the children can keep a portion of the estate. Without this clause, the estate would go directly to the most recent spouse.
- **Forum selection and choice of law:** This clause determines which jurisdiction and applicable law will govern any dispute.
- **Sunset provisions:** Some agreements contain a clause stipulating when the contract expires.

## **Cohabitation Agreements**

A cohabitation agreement is a legal document that sets out the financial arrangements between individuals who are living together and/or share ownership of a home but are not married or in a civil partnership. It can cover issues such as property ownership, financial contributions, and arrangements for children.

The agreement creates a mutual understanding of the obligations the partners have to one another in case the relationship dissolves.

Cohabitation agreements often cover rights and obligations on issues such as:

- distribution of property in case of a split;
- ownership of any property and joint bank accounts;
- payment of debts during and after the relationship;
- financial arrangements during and after the relationship, especially when one spouse opts to fulfil an unpaid caretaking role instead of paid labour outside of the home;
- responsibility for making mortgage payments or paying the rent during the marriage and after it has ended;
- responsibility for paying bills and other expenses; and
- child custody and support.

Cohabitation agreements are recognised in England and Wales, but like prenuptial agreements, they are not automatically legally binding. Courts may consider them, especially if they are fair and both parties had the opportunity to seek legal advice. Similarly to pre-nups, courts are more likely to uphold the agreement if it is properly drafted, contains reasonable terms, and the parties are entitled to receive independent legal advice.

Since cohabiting couples have fewer rights than married couples, cohabitation agreements are crucial as the law may not automatically step in to protect the financial position of the parties. For instance, if a house is under one partner's name but the other partner pays all the other household expenditures, only the partner owning the property will have a right towards such property. The other partner will have little to no rights and the court will have limited powers to redistribute the equity in the family home. A cohabitation agreement, therefore, enables a partner to claim some of the safeguards available to spouses or civil partners.

Moreover, cohabitation agreements are important to address matters relating to children. Through this agreement, partners can ensure that they share responsibility, including financial responsibility, for the child.

This agreement can be made at any time, although it is advised to have such an agreement in place before the partners move in together.

Cohabitation agreements may also be subject to review by a court, especially if there has been a significant change in circumstances. The agreement will be void if the partners decide to marry later. In that case, they might want to enter into a prenuptial or postnuptial agreement.

As the law on separation of unmarried couples is complex and often brings unfair results, entering a cohabitation agreement is the best manner to prevent such unfair outcomes and avoid the need to go to court.

**We Can Help...**



Although not the most romantic of outlooks, pre-nup and cohabitation agreements protect the parties in the event that things do not work out. It is strongly recommended that individuals seek independent legal advice to ensure the agreements are properly drafted, fair, and stand the best chance of being upheld in court, if necessary.

For unmarried couples, cohabitation agreements are the best means of protecting themselves and avoiding costly disputes. Our team is here to help you in the drafting of such agreements.