

Why I may need a Pre-Nup and how do I sell the idea to my partner?

I am often asked the above two questions and whilst I do not confess to have the definitive answer to the latter I have, over the number of years of practicing as a family lawyer, come across some insights which may prove helpful.

Who May Need a Pre-Nup?

Those entering into a second marriage and wishing to protect pre-second marriage acquired assets or businesses or protect future expected inheritances for say the benefit of children born to an earlier marriage or relationship.

Alternatively, someone who is later in life getting married for the first time with pre-marriage acquired assets or businesses or future expected inheritances.

Are Pre-Nups Absolutely Legally Binding?

No but they will be given effect by the court as a preliminary issue where “the agreement was freely entered into by the parties with a full appreciation of its implications unless in the circumstances prevailing at the time it would not be fair to hold the parties to their agreement”.

How do I sell the idea of a Pre-Nup to my intended Spouse?

First question is whether you raise the issue pre or post proposal.

If you raise it post proposal – then you could add it to the list of practicalities to be discussed, like date/place/size of wedding, honeymoon etc.

Avoid going into it with a pre-conceived idea of what the agreement should say. It is a question of you both deciding what would be a fair distribution of assets on divorce.

Discuss the issue as part of your estate planning – thereby making it an indirect issue.

There is the risk however you may have to announce the calling off of the wedding if the suggestion of a Pre-Nup is a deal maker.

If you address the issue pre-proposal then it can be part of the getting to know the other person's values to marriage, having a child with a disability and financial issues generally and awards both parties openness and honesty in relation to their expectations of the other and the marriage in the unfortunate event it may break down. If your intended spouse is a practically minded person or hates confrontation she may think a Pre-Nup is a good idea.

Someone once said they sold the idea of a Pre-Nup on the strength of the following:-

“Divorces are ugly and he never wanted to get divorced (again) and he only ever wanted to get married once (again) and that wouldn't it be the best time to agree when we both loved and respected each other what would be both a fair division of the assets and what the other needs and deserves in the event

we are unlucky enough that our relationship fails. During a separation is the worst time for that as hurt emotions can get in the way and cloud judgements”.

Either way let your intended know it is not about her or how you view your relationship its about reducing uncertainty, conflict and expense at a time when you may not like each other as much as you do now.

If there is a possibility of children being born to the relationship then this may be a trigger event to review and renegotiate the terms of the original Pre-Nup.

Some may see Pre-Nups as evidence of a lack of knowledge of the other or trust between two people or a lack of commitment but in reality, it is the equivalent of an insurance policy – practical planning for the occurrence of the worse case scenario.

It may be beneficial to consult a collaboratively trained lawyer to do the Pre-Nup so it is less adversarial and more a meeting of two minds yours and your intended’s with guidance from a legal advisor.

If your intended is dead against Pre-Nups you may wonder if you share the same core values and therefore whether they are the right lifetime partner for you.

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