



prenups / postnups
an essential wealth protection tool

at a glance

Prenups and postnups have gained a great deal of traction and influence in the English divorce courts over the last decade. They are now a key wealth protection tool for:

- individuals who are going into a marriage having already built up some wealth
- families looking to pass money down the generations
- companies who want to protect the business from the potential breakdown of any shareholder's marriage

Contrary to popular belief, prenups and postnups are not all about protecting money from 'gold-diggers'. They are as much about providing the financially weaker spouse with certainty and security. They are also not just the preserve of the rich and famous; someone with assets of as little as £100,000 could still get a lot a benefit from one.



what are they?

- A prenup is a written contract between a couple made before their marriage that specifies what would happen if the marriage breaks down
- A postnup is almost the same as a prenup, the only different being that it is signed during the marriage, for example if the couple have had some difficulties but want to try again, or if one of them is 'coming into money'

In a divorce situation, judges in the family courts have very wide discretion to divide a family's finances according to what the judge thinks is fair. This includes wide powers to transfer or sell any type of asset (including company shares and pensions) and share future income, possibly without any end point.

The difficulty for all divorcing couples is that the discretionary element makes it incredibly hard to predict what the result will be. This provides a lot of scope for arguments, uncertainty, delay, and very high legal fees.

A prenup or postnup is designed to regulate what would happen with the couple's wealth should the marriage break down. This substantially narrows the extent of judicial discretion. Prenups or postnups are therefore commonly used to

- Limit claims to far less than half of all assets
- "Ring-fence" specific assets
- Limit the amount and duration of any maintenance
- Prove what assets are brought into the marriage, and by whom.

These assets are called "non-matrimonial property" and are less likely to be divided equally on divorce, because they are not the product of the marriage.



how effective are prenups and postnups?

As a result of a large number of court cases over the last decade (including the Supreme Court) the family courts will now be very heavily influenced by a prenup or postnup, as long as:

- It is freely entered into
- The spouses fully appreciate the implications of entering into it
- It is not significantly unfair to one spouse



how do I ensure my prenup or postnup will be binding?

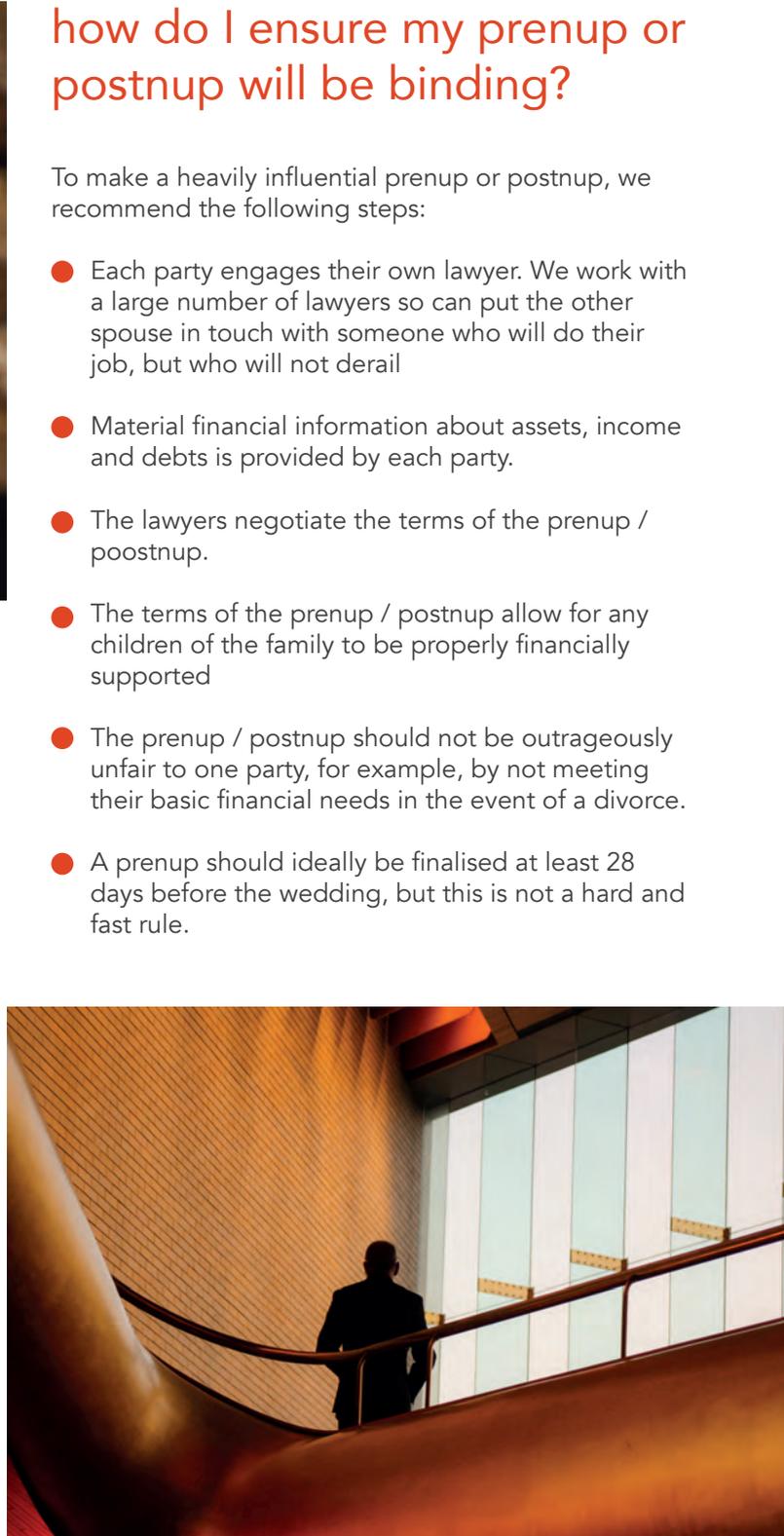
To make a heavily influential prenup or postnup, we recommend the following steps:

- Each party engages their own lawyer. We work with a large number of lawyers so can put the other spouse in touch with someone who will do their job, but who will not derail
- Material financial information about assets, income and debts is provided by each party.
- The lawyers negotiate the terms of the prenup / postnup.
- The terms of the prenup / postnup allow for any children of the family to be properly financially supported
- The prenup / postnup should not be outrageously unfair to one party, for example, by not meeting their basic financial needs in the event of a divorce.
- A prenup should ideally be finalised at least 28 days before the wedding, but this is not a hard and fast rule.

who might benefit from a prenup or postnup?

A prenup or postnup should be considered by:

- Anyone who has been married before who wants to ensure that wealth generated during that relationship passes to any children from it
- Anyone who is bringing assets to a marriage (particularly cherished properties or a family business) that they want to protect.
- Parents who want to ensure that any lifetime gifts or inheritances stay within their family.
- Business owners who want to ensure that the future of the business is not jeopardised by their fellow shareholder/director having to sell or transfer their shareholding as a result of a divorce.
- Trustees who are obliged to protect trust assets (a trust is by no means safe from divorce).



how much will it cost?

Probably not as much as you think, although fees depend very much on individual circumstances, including:

- How complex the agreement is, in terms of what needs to be covered.
- How much financial information is required and whether it needs input from other experts, such as someone to value a property or business.
- Whether the agreement has to deal with international aspects
- How much negotiation needs to take place in order to finalise the agreement.

We can always provide you with a good idea of the cost of a prenup or postnup (and confirmation of whether it will be suitable for you) once we have some information about your circumstances and finances.

...and we can guarantee that you will save far more than the cost of a prenup or postnup if you ever divorce!

how do I introduce the idea?

Attitudes to prenups and postnups are changing. In a recent poll, almost half of those aged 45-54 said they would consider such an agreement because they have either gone through a divorce or know someone who has, and almost half of 18 to 24-year-olds also said they would consider entering into a prenup.

In a few years' time, prenups and postnups are likely to be the norm, as they are in the US and most of Europe. Having said that, the idea is unromantic and can be awkward to bring up, so here are a few suggestions about how to do it:

- Discuss it as part of more general financial planning when contemplating marriage, such as the need to make new wills.
- Most people provide for the possibility of bad things happening in other areas of their life, for example through insurance, so why not provide for the possibility of divorce?
- Everyone knows that divorce can be stressful, drawn out, expensive and unpredictable. A prenup or postnup provides certainty and security for both parties, and will cut out a lot of the delay and expense.
- If there are children from a previous relationship, it is fair to ensure that money built up during that relationship is passed to them.
- Parents could suggest a prenup or postnup as a condition of passing their wealth down to the next generation, either during their lifetime or after their death.
- Partnerships or companies can have a firm-wide policy that all of the existing and incoming business owners must have a prenup or postnup.
- Entering into a prenup or postnup should demonstrate that a couple are getting married for the right reasons.



Your contact at Evolve Family Law for nuptial agreements:

Robin Charrot
mob. 07969 211544



www.evolvefamilylaw.co.uk

holmes chapel

4 The Clock Tower
Manor Lane . Holmes Chapel
Cheshire . CW4 8DJ
tel. 01477 464020

prestwich

Suite 8, 1 Chapel Street
Prestwich
Manchester . M25 1AE
tel. 0161 466 0332