

Can You DIY Your Prenup?

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In an effort to save money on their property settlement, some couples have sought to DIY their prenu. But is it a good idea?

The *Family Law Act* states that for a prenu to be valid and enforceable, one requirement is that both parties need to obtain independent legal advice. This legal advice has three components:

1. Firstly, the legal advice must be given before signing the agreement and must cover the effect of the agreement on the rights of that spouse and about the advantages and disadvantages of the agreement.
2. Secondly, either before or after signing the agreement, each spouse must be provided with a signed statement by the legal practitioner stating that the advice was provided to that party.
3. Thirdly, a copy of the statement must be provided to the other spouse or legal practitioner for the other party.

Take for instance the scenario of Mark and Sally. Mark and Sally would both like a prenu before they marry next year to protect their respective financial interests. According to Australian law, both Mark and Sally must seek separate legal advice. That is, two separate lawyers that are independent of each other need to be engaged in the process. Prior to signing the agreement, Lawyer A gives their advice to Mark, while Lawyer B gives their advice to Sally. Before or after signing the prenu, Mark's lawyer needs to provide a signed statement that declares the said legal advice was given to Mark. Then, a copy of that statement needs to be given to Sally or her lawyer. Sally also needs to do the same.

While lawyers must be engaged in the process, parties to a relationship can potentially keep costs down by drafting the prenu themselves and seeking legal advice on the draft. However, given the potential risks of an unenforceable prenu due to poor drafting, a do-it-yourself approach is not recommended.

For advice on prenups contact us on **1800 300 170** or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.