



# The FindLaw Guide to Prenuptial Agreements

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As you prepare for your wedding, it's worth remembering that even the best of marriages can fail. Here's some information on prenuptial agreements so that you can protect yourself if things don't end with "until death do us part."

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## Introduction

Congratulations! You're about to walk down the aisle with the love of your life. As you begin this next chapter, it is important to ensure that the legal and financial aspects of your life and your future spouse's life are in good order, however unromantic that may seem. You may consider drafting a prenuptial agreement, or prenup, which is a written agreement between you and your intended. FindLaw and its directory of attorneys can help you determine whether a prenup is right for you, and prepare a prenup that will be found valid if challenged in court.

## What Prenups Can Do

Each state has different laws governing the division of property between couples if a marriage ends in death or divorce. Most states agree that property or debt accumulated during marriage belongs to both spouses equally, but states differ on property that each spouse owned before the marriage began. A properly drafted prenuptial agreement can override the laws of the state and divide the property according to the wishes of the couple. There are many reasons a couple may decide to put this extra protection in place, including:

- One spouse has children from a previous relationship. A prenup, along with the rest of your [estate planning tools](#), ensures that the child's interest will be protected in case the parent dies while married.
- One spouse has much larger assets (or debts) than the other. These could include bank accounts, real estate, or interests in businesses. Prenuptial agreements will keep these assets in one spouse's name only instead of both spouses.
- One spouse sacrificed their career to support the other spouse. Their prenup can ensure that the spouse will be adequately compensated for their support.

A prenuptial agreement can also govern who will manage [household financial responsibilities](#), including the household bank accounts, paying bills, and who will contribute to savings accounts. However, the major advantage to prenuptial agreements is that all these issues are out in the open before the marriage begins. This means potentially contentious issues are resolved with cool heads before the start of heated and expensive divorce proceedings.



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## What Prenups Cannot Do

State courts will not uphold provisions of prenuptial agreements if they are against “public policy.” A prenuptial agreement cannot encourage divorce, or contain clauses that might have provided incentives for divorce. Also, neither spouse can waive their right to alimony or spousal support in a prenup.

Prenups cannot determine child custody or support before a divorce. They also cannot determine who will take care of household chores like cleaning the bathroom or driving the kids to school. Prenups are strictly for property issues, and not such items of personal preference.

## Is a Prenup Right for You?

Prenuptial agreements can be a great tool, but they are **not for everyone**. If you and your future spouse do not have many assets, or are not sure yet who will become the breadwinner, then a prenup might not be right for you. However, if you have children from a previous marriage, a high-paying job, or high valued real or personal property, then a drafting a prenuptial agreement may be worth the time and expense.

## Requirements for a Valid Prenup

There are many [sample prenuptial agreements](#) online and it is possible to draft one yourself. However, requirements for valid prenups vary between states, and it is important to check your local statutes or with a local attorney to make sure that your prenup will stand up in court. There are several requirements for [valid prenups](#) that are common between most states:

- The agreement must be in writing and signed by both spouses.
- Both spouses must have had the opportunity to read and understand the agreement.
- Both spouses must have had the opportunity to meet

with their own attorney to discuss the agreement.

- The prenuptial agreement must cover only financial issues as described above.
- Both spouses gave true and complete information when drafting the prenup.
- The agreement does not impose an undue burden on either spouse.

**STOP**

## Should I Talk to an Attorney?

If you are considering a prenuptial agreement, you may want to speak with a family law attorney to ensure that your agreement meets the requirements of your state. You can locate a family law attorney now by visiting <http://www.findlaw.com> and choosing among several quality-assured lawyers in your area.

## For More Information

Regarding prenuptial agreements and other marriage related issues, please visit <http://family.findlaw.com/marriage>.

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