

The Pros and Cons of Prenuptial Agreements



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[Editor's Note: This is a guest post from Eva Hibnick, an attorney and the founder of the website [Endure Prenups](#) where prenuptial agreements start at \$495. We have no financial relationship. She's an attorney, but she's not your attorney, so she asked that this disclaimer run with the piece: The information in this blog post is provided for general informational purposes only, and may not reflect the current law in your jurisdiction. No information contained in this post should be construed as legal advice from Endure Documents Inc. or the individual author, nor is it intended to be a substitute for legal counsel on any subject matter. No reader of this post should act or refrain from acting on the basis of any information included in, or accessible through, this post without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a lawyer licensed in the recipient's state, country or other appropriate licensing jurisdiction.]

Prenups are on the rise. According to [a survey of US family law attorneys](#), prenuptial agreements have become much more prevalent in recent years. This is largely due to the fact that ordinary people, not just the rich and famous, are

requesting prenuptial agreements. More young people are choosing to marry later in life, and when they do, they enter marriages with substantial assets. Personally, I explored the idea of getting a prenup not because the value of my assets was disproportionate to that of my partner's, but because as an entrepreneur, I wanted to protect my business interests. Millennials who are [entrepreneurs](#) or creatives (actors, writers, social media influencers) are asking for prenuptial agreements to protect their equity interests and intellectual property. Despite the increase in demand for prenuptial agreements, there are still many critics.



Eva Hibnick

Below is a list of the benefits and downsides of getting a prenuptial agreement which will allow you to make an informed decision about whether a prenuptial agreement is a wise decision for you or not.

Benefits of a Pre-Nup

First, the benefits:

1 Transparency Around Each Other's Financial Situation

A prenuptial agreement requires full disclosure of each

party's assets and debts. Having conversations about your finances with the person you are about to spend the rest of your life with seems like a wise decision. This conversation will naturally lead into talking about how each of you [budgets](#), how much each of you spends, what each of you thinks money should be spent on etc. These are important topics to discuss with your partner so that you both can agree how to plan for your financial future together.

2 Clarity Around Financial Obligations

Apart from listing current finances of each party, and specifying what is separate and what becomes marital property, prenuptial agreements can also determine what each party is responsible for. If the parties agree that everything is separate, who will pay the household expenses? Will you share a joint account from which you pay household expenses? Will you both contribute the same amount to the joint account or will the amounts be commensurate with your incomes? Will you be filing taxes jointly or separately? These are all decisions that you and your future spouse should discuss and decide what is best.

3 Freedom of Choice



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Prenuptial agreements enable you and your spouse to dictate the rules of your marriage and plan for how property should be

divided if you decide to part ways. Without a prenuptial agreement, you are leaving it up to the one-size-fits-all laws in your state, and the judge, to tell you what is right for you and your family. Prenups provide you and your spouse with the power to set your own rules and clarify how those rules will govern your relationship.

4 Decrease Legal Fees and Headaches in the Future

Divorces are expensive. The legal fees alone can cost anywhere from \$15,000 to \$50,000. In addition to legal fees, there are always ancillary fees related to buying a new apartment/house, selling your house, therapy for you and the children, financial planners etc. Having a prenup in place usually decreases your legal bills because it provides the court with a clear picture of what the parties intended to happen upon divorce.

5 Address Spousal Support

Spousal support or alimony is the amount of money that one spouse is required to pay to the other spouse after divorce, so that the spouse receiving the payments can maintain the same standard of living as he or she had while married. Some states do not allow a waiver of spousal support, but more and more states have started to allow for it. For example, in California, spouses can waive spousal support as long as they are represented by independent counsel and it is not based on unconscionable terms. Many spouses prefer to have the structure of spousal support in place so that they know exactly what they will be responsible for paying and getting in the case of divorce. Some choose to waive it entirely. If you choose to waive it, you should both understand what rights you are giving up.

Downsides of a Pre-Nup



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Next, let's discuss the cons of a pre-nuptial agreement.

1 Admitting to Yourself That Divorce Could Happen to You

Most people think of marriage as everlasting – that once they find their soulmate, they will be married to them forever. The romantic inside everyone believes that despite the divorce rate in our country, you and your spouse will be together “until death do us part.” Prenups talk about the white elephant in the room that no couple, especially months before the happiest day of their lives, wants to address, that of the divorce. When talking about a prenup with your spouse, you have to contemplate the idea of divorce and that it may happen to you. This is a touchy mindset for many. In comparison to health insurance, auto insurance, or hurricane insurance, insuring against some of the financial ramifications of divorce with the use of a prenup is still a very emotional topic for people to think and talk about.

2 Spouse's Reactions

Many people think of getting a prenup, but then second guess

themselves when they realize they have to broach the topic with their spouse. You hear stories of the fiancée crying or becoming enraged when their partner suggests getting a prenup. Negotiating the terms in the agreement may also put unnecessary stress on your marriage. While planning a wedding and figuring out how to combine two separate lives into one, the last thing you want is to be in an adversarial position negotiating a prenuptial agreement with (or rather against) your future spouse. Of course, prenups can be a touchy subject for some couples, but there is always a way to bring up the topic and discuss the pros and cons in a practical sense.

3 The “Silent” Party to the Prenup

Parents, particularly wealthy parents anticipating leaving large inheritances, are sometimes the reason their daughter or son asks their future spouse to sign a prenuptial agreement. This causes problems between both the child and the parents, as well as between the child and the spouse, because neither of the two parties signing the document may have wanted it.

4 Sometimes State Default Rules are Enough

A teal-colored advertisement for DRB (Darien Rowayton Bank). The ad features a smiling man in a white lab coat with a stethoscope. The text reads: "DRB DARIEN ROWAYTON BANK", "Matched yet?", "Refinance your loans with DRB and pay only \$100/month during residency.", "WCI Residents get a \$300 bonus.", and a white button with "APPLY NOW" in teal text.

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Sometimes spouses that seek out a prenup, really just don't understand what the default laws are in their state with

respect to divorce and division of property. There are instances where the spouses actually like how the state defines marital property and separate property, and a prenuptial agreement is at the end of the day not really needed. Many attorneys have told me that couples will come in for a consult, and then end up not pursuing the prenuptial agreement after they come to understand what it is. In those instances, spending time negotiating or talking about the pre-nup may put unnecessary strain on your relationship, only to realize you don't actually need one.

5 Circumstances Change

When couples are negotiating a prenuptial agreement, they are young, in love and usually without children. As life goes on, people get sick, financial situations change, career paths change and children become a priority. All of these life events may impact the original plan set out in the prenuptial agreement and thus will require amendment. Some argue that because you can't predict the future, prenups as a static document just don't make sense.

Just like anything else, there are pros and cons to getting a prenuptial agreement. Today, many couples are [choosing to avoid marriage altogether](#) and remain in a committed relationship. This option results in everything inherently staying separate.

What do you think? Did you get a pre-nup? Why or why not? Do you regret your decision? Have you had to implement a pre-nup in a divorce? Did it work well to limit the time and costs of the divorce? Comment below!