

The Unofficial Guide to NY Prenuptial Agreements

*The Easy, Fill-in-the-Blanks Way to
Understand Prenuptial Agreements*

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For Mom and Dad

**I am forever thankful for your wisdom, kindness, and
devotion.**

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This book was written for educational purposes and you should retain a matrimonial attorney, who is experienced and licensed in their jurisdiction, to draft your prenuptial or post nuptial agreements.

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INTRODUCTION

-All of the net proceeds from the sale of this book will go to charities related to victims of domestic violence, and other charitable organizations.

You'd think Las Vegas casino magnate, Steve Wynn, would have been well-acquainted with the devastating effects of divorce after his marriage to Elaine Wynn ended in 1986. Unfortunately, that experience with the family court system didn't stop Steve from marrying the same woman again five years later, in 1991. Love makes fools of us all, right? It was this second marriage, which lasted until 2010, that resulted in one of the most expensive divorce settlements of all time — around \$1 billion.

This begs the question: Why didn't the couple get a prenup?

Actually, the question is a bit more complicated than it appears at first glance, as Steven Spielberg found out the hard way in 1989, when a judge refused to recognize his prenuptial agreement (which was jotted down on the back of a cocktail napkin). His divorcée, Amy Irving, was ultimately awarded a staggering \$100 million after their three-and-a-half year marriage fizzled.

Tiger Woods also found out too late that his prenup wasn't as ironclad as he'd thought. After he crashed his Escalade into a tree in front of his family home and then admitted to a string of infidelities, he was forced to renegotiate the terms of his prenup. In the end, his wife, Swedish model, Elin Nordegren, ended up walking away with \$110 million. Michael Jordan experienced a similar rude awakening during his 2007 divorce from Juanita Vanoy. Despite the fact that they had a firm

prenuptial agreement in place, Juanita was still awarded a significant amount of real estate, full custody of the couple's three children, and a cool \$168 million.

Adele and her former husband, Simon Konecki, didn't have a prenuptial agreement at all. This means that Konecki could have received up to half of Adele's fortune, which is reportedly greater than \$180 million. However, Adele's request to keep the details of their settlement a secret was approved, so the exact numbers are unknown to the public. Still, the question remains the same: Why didn't the couple get a prenup?

Marriage and divorce, as it turns out, involve many complicated legal matters — and prenuptial agreements are among the most confusing of all. A prenuptial agreement (also known as a “prenup”) is a contract that is agreed to and signed by both potential spouses prior to a marriage and sets forth how assets, debts, and business should be divided in the case of a divorce. Prenups have become more popular in recent years as the marriage age has increased and individuals are entering their marriages with more wealth. However, prenups are not just about money. They're really about love.

It takes a lot of honesty, integrity, and courage to discuss the possibility of divorce with the person you hope to spend the rest of your life with. By doing the hard work of securing each other's future stability in the event of a divorce, you can actually experience more love for one another knowing the financial incentives for divorce are removed. By working together on a prenup, instead of working against each other through a divorce, you can save yourself a lot of stress down the road.

The fear and uncertainty of a divorce can wreak havoc on each of your lives. One cheating detective in Massachusetts was so afraid of his wife being awarded half of his pension through a divorce that he allegedly staged his wife's 'suicide' so he could retire with his lover. If the couple had a prenup, he may not have even considered this desperate

act of violence.

One of the great things about a prenup is that it simplifies the process of obtaining a divorce. Since you've already set everything up ahead of time, there's no need to argue over who gets what upon the termination of marriage. This eliminates much of the pettiness and fighting that often permeates divorces. It's never fun to get divorced, of course, but with a good prenup in place the separation process can at least be quick, organized, fair, and civil. It is not a guarantee against litigation, but it is a shield designed to protect both parties.

In this unofficial guidebook, I'll walk you through the common sections of a prenuptial agreement and provide you with a sample version of each section for the state of New York. With some minor modifications, you'll have a great starting point for your own prenup. Also, this book will help you understand the many clauses of a prenup so you can know exactly what your document actually means when it comes time to sign.

The goal of any prenuptial agreement is to define the terms and conditions of the parties' assets and liabilities over the lifespan of the marriage. Based on that description, it seems like this document shouldn't be too hard to set up. In reality, however, negotiating a prenuptial agreement can be challenging because each party has incentive to press for certain provisions. Additionally, the negotiations for a prenup generally aren't truly fair because one spouse typically has less money and, therefore, less leverage to make demands and craft an advantageous agreement.

I always recommend both parties to have counsel during the negotiations and signing of the agreement. This significantly strengthens your prenup and reduces either party from making a motion to set aside the subject agreement. If you and your partner were to use this book outline your prenuptial agreement and then have your respective lawyers draft the prenuptial agreement, and go through the entire agree-

ment, and talk through the pros and cons of each point, that's enough to honestly say each spouse was represented by legal counsel during the development and signing of your prenup. Just make sure that both parties have enough time to review and finalize the prenup months before the wedding.

Maybe you'll find that the process of talking through these deep and, at times, uncomfortable issues with your future spouse brings you even closer together than you were before, or perhaps these talks will strain your relationship and cause you to reconsider marriage altogether. The latter isn't common, but I've definitely seen it. In that situation, the only comfort I can offer is that it's better to discover your irreconcilable differences now, before you get married, than to wait and realize them a few years down the road when it is too late.

Use this process as an opportunity to listen deeply to your partner and share your own fears and insecurities. This is not an easy conversation to have, but it's an important one. A prenup isn't about one partner maintaining power over the other, nor is it about proving someone is or isn't a gold-digger. Instead, this conversation is about finding a way for both of you to feel absolutely safe and comfortable, so you can relax completely into your marriage focusing on what really matters: Love.



Part 1

Pre Work

Chapter One

PRENUPS, WHO NEEDS THEM?

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“My mother always said don't marry for money, divorce for money.”

~Wendy Liebman

Divorce is often referred to as a winner-take-all game. In most divorces, one spouse appears to come out the winner, and the other spouse, the loser. Most people inherently understand this. As one MIT graduate noticed at his 30-year reunion:

“Many financially successful and reputable women had often been sued by their ex husbands. For example, female physicians who practiced their profession for 30 years without a malpractice lawsuit had found themselves defending lawsuits from their spouse in family court. No fault divorce for their plaintiffs was rephrased as, ‘Would you like to discard your 55 year old wife, take half the money she saved from working as a medical specialist, take half the money she’s going to earn going forward, and see if ... younger women [are] more exciting?’”

In other words, when a divorce was an obvious win for the husband he was much more likely to end the marriage.

This observation is supported by empirical research as well. Marital researchers Brinig and Allen analyzed over 46,000 divorce certificates in a landmark study to determine the factors that lead to divorce. Their paper, “These Boots Were Made for Walking,” released in the year 2000, concluded divorce is almost exclusively motivated by self-interest. The partner who files for divorce is generally the one who stands to gain the most when the marriage is dissolved. A partner will often leave after obtaining an advanced degree or because they anticipate a large financial settlement. Occasionally, they will leave to avoid cruelty. (Approximately 6% of divorces.)

However, the most important factor appears to be child custody. When women anticipate receiving full custody of the children they are upwards of *seven times more likely* to file for divorce than when they anticipate joint custody. In other words, it’s only when divorce would be an obvious “win” for one partner that a divorce becomes the likely outcome.

I once heard a Massachusetts divorce attorney explain that many potential clients come to his office after hearing about a friend or neighbor who got divorced and received a large settlement. He explained:

“When I tell the prospect that the facts of her case are different and she is likely to end up with a smaller number, if that number isn’t sufficient to maintain her lifestyle, she’ll typically reconsider the idea of suing. If that number will provide a better material lifestyle than what she enjoys presently, she’ll write me a \$25,000 retainer check on the spot. A lot of men in Massachusetts would be surprised to find out that they are still married only because they aren’t wealthy enough to be worth suing.”

Divorce can be a winner-take-all game, and if there are kids involved, the winner is usually going to be the woman. That is why women initiate over two-thirds of all divorces. If there are no kids involved, the winner will typically be whichever partner earns less money. That’s why the less wealthy partner initiates the vast majority of childless divorces.

In my opinion, this system creates some disagreeable incentives.

Divorce shouldn't be about who can get a better deal by ending the marriage. It shouldn't be about money. Divorce should be an honest last resort after a couple has been unable to work out their differences. It shouldn't be a winner-takes-all game, but, rather, a fair and equal division of marital assets and a just sharing of custody if there are children involved.

Divorce should be an honest last resort after a couple has been unable to work out their differences.

A prenuptial agreement can help you level the playing field and bring the incentives back into alignment within your marriage. With a prenup, you and your spouse can agree in advance on a fair way to split up your assets in case of a divorce so you won't have to rely on the winner-takes-all family court system. This allows you to plan for fairness from the very beginning and remove the temptation to take advantage of each other further down the line.

Executing a good prenup requires thought and planning. This isn't something that can be scribbled on the back of a cocktail napkin (ahem, Steven Spielberg). If your prenup isn't carefully and thoroughly put together, it's not going to hold up later in court. A judge will just end up throwing it out.

Ironically, most engaged couples spend more time planning their wedding and honeymoon than they do thinking through their long-term financial future. Most of us are so excited to have finally found the "one" that we throw all caution to the wind and refuse to entertain the possibility of divorce. *That won't happen to us*, we tell ourselves.

The key, however, is that people change. The person you are to-day isn't the same person you will be ten years from now. And the same is true for your spouse.

In a study published in *Science* magazine, Harvard psychologist Dan Gilbert surveyed over 19,000 people at every stage of life and asked them two simple questions. First, he asked them to estimate how much they'd changed during the past ten years. Next, he asked them to estimate how much they would change during the next ten years. Shockingly, across the board, people of every age displayed the same bias. They were quick to admit they'd changed a lot over the *last* ten years, but they predicted they wouldn't change much over the *next* ten.

We all believe we've finally become the person we're going to be for the rest of our lives. Gilbert and his colleagues nicknamed this bias "The End of History Illusion."

Don't let this illusion blind you and your spouse from the need for a prenup. Yes, you are a great match today. But it's impossible to know how you'll both change in the coming years, and that's completely OK. Prepare for the possibility that this marriage might not last forever. Spend some time and energy on your prenup now. Statistically, over half of all marriages in the United States end in divorce. That means it's a possibility worth preparing for.

Before you can start negotiating a prenup with your partner and working through this guidebook together, you must have a tough conversation and break it to your loved one that you want a prenup. After coaching many couples through this difficult situation, I have some tips to make this conversation go smoothly...