

Using Prenuptial Agreements in Texas

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Celebrity [prenuptial agreements](#) can certainly make headlines. They include unique (and sometimes unflattering) requests that become public fodder; especially when things don't work out.

Kim Kardashian reportedly will keep all her premarital assets as well as income she earned during her 72-day marriage to Kris Humphries. It is rumored that sister Khloe Kardashian's prenup with new Dallas Mavericks forward Lamar Odom includes a \$5,000 monthly shopping budget and \$1,000 monthly beauty budget. Katie Holmes apparently receives \$3 million for every year she's married to actor Tom Cruise. If the marriage lasts more than 11 years, she could be entitled to half of his fortune should they divorce. On the opposite end of the spectrum, Paul McCartney turned down a prenuptial agreement before tying the knot with Nancy Shevell. The legal wrangling in his last divorce probably soured him on the prospect of another prenup.

As people become more ambivalent about marriage, prenups are becoming more common as couples are increasingly prudent about parting ways in case the relationship does not work out. This article will explain what prenuptial agreements are, discuss their benefits and limitations, and help determine whether a prenup is right for you.

Texas Prenups in General

Prenuptial agreements are essentially contracts; written agreements entered into between spouses before they are married. Couples use prenups to avoid disputes regarding property ownership and division of financial assets in the event of a divorce. Prenups are commonly used by couples entering a second marriage, as they want to make clear definitions of separate property. Some couples are combining new households and want to protect children or other relatives from a first marriage. Others may receive income from a jointly-held business with their ex-spouse, or spousal support from a past marriage, and would like to make sure such income remains separate property.

However, this does not mean that couples entering their first marriage are prohibited from entering into a prenup. People commonly use prenuptial agreements to protect assets owned before the marriage or to assign debts to either spouse in the event of a divorce.

Generally, Texas family courts recognize prenuptial agreements if the parties:

- had independent counsel in creating the agreement,
- were aware of their rights regarding property division under Texas law, especially if they agree to waive such rights,
- entered into the agreement freely and voluntarily; and
- were aware of each other's income, and that full disclosures had been made.

Pros of Prenups – Clear Communication

Since financial discord is the primary reason for divorce, talking to your spouse ahead of time regarding finances and can help in avoiding future rifts over asset management. Of course, prenups are not the most romantic topic for discussion, especially because it invites the thought that your relationship could end badly. However, discussing these issues nurtures healthy communication, sets clear expectations for financial harmony, and breaks down potential barriers that may hinder your relationship. Even if you and your spouse decide a prenup is not for you, discussing it is a very good idea, and you could make fun of celebrities at the same time.

Cons of Prenups – Rocking the Boat

Conversely, prenups have their drawbacks. Some people broach the topic simply at the wrong time. Not only is in bad taste to propose a prenup soon before a wedding, it may not be enforceable in court. Also, a prenups may uncover other faults in the relationship (other than a significant income disparity). Trust issues, especially when manifested through a prenups, can doom a relationship.

Ultimately, if you fear that discussing a property and finance distribution and the possibility of separation or divorce will irreparably harm your relationship, a prenup may not be right for you.

Limitations of Prenups

While you may agree on a number of a financial and property issues through a prenup, it cannot include designations for child support or child custody. Only family courts may make final determinations on these issues. The court must follow statutory guidelines in calculating child support, and must make specific findings if it finds that a deviation is appropriate. Likewise, custody is determined by using the "best interest of the child" standard, where the court considers a number of factors to determine where the child will live and which parent may make decisions for the child.

Also, a court can set aside any part of a prenup it finds to be unfair or not in the interest of justice.

The preceding is not intended to be legal advice. If you have questions about prenuptial agreements in Texas, an experienced [Texas family law attorney](#) can help.