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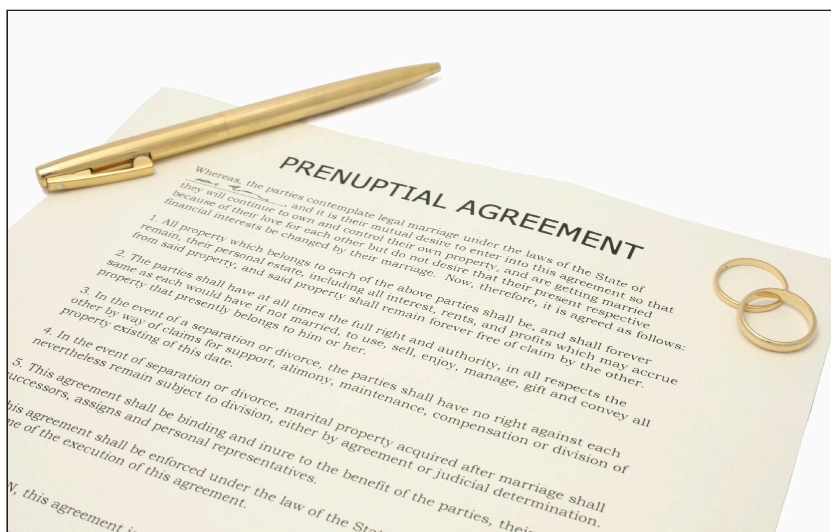
Prenups can be challenged if terms aren't fair

Most people who are getting divorced assume that if they agreed to a prenuptial agreement before they got married they're going to be stuck with its terms.

That's generally the case, which is why if you're being asked by your betrothed to sign a prenup, it's a good idea to consult with a lawyer of your own beforehand and to make sure you speak to a *family law* attorney instead of a generalist who's dabbling in divorce law.

Still, contrary to general belief prenups are not necessarily bulletproof. In fact, depending on the circumstances and where you live, a divorce court judge may be willing to toss a prenup aside if the terms are legitimately unfair.

That means if you're the person seeking the prenup, it's important to consult with a family lawyer to help draft it.



Take, for example, a case from Michigan. Two days before Christine and Earl Allard's 1993 wedding, they entered into a prenup under which they each retained sole ownership of all real estate, personal property and "intangible" property they owned prior to the marriage. The prenup also said that if they ever got divorced, all property acquired during the marriage would be split 50-50, but there were significant exceptions to that provision. In addition, they agreed to discharge any claim to alimony, support or any other types of rights "incident to" the marriage or divorce.

Earl filed for divorce in 2010. When the case was pending in court, he asked for a ruling declaring that the prenup governed every possible issue in the divorce except custody, parenting time and child support.

Christine opposed this motion, arguing that the terms of the prenup were "unconscionable," because after 20 years of marriage it operated to deprive her of any real part of the marital estate. In other words, the terms were so unfair and one-sided as to "shock the conscience of the court." Because of that, she argued, the contract should be voided and

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Things to think about when your intended has bad credit

Love can blind a person to many things, and bad credit is one of them. But that's an issue that can come back to bite you later. If your spouse-to-be has bad credit, it can cause huge problems, keeping you from having the kind of married life you'd planned on. It will rear its ugly head when you're thinking about buying a house, when you're trying to give your kids the best possible educational, athletic and enrichment opportunities and even when you're trying to plan the wedding of your dreams. That's why it's important to sit down with your intended *before* getting married and having an honest financial conversation.

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It's important to sit down with your intended *before* getting married and having an honest financial conversation.

One thing you need to talk about is what kind of debt you're both bringing into the marriage. For example, do you or your significant other have "good" debt? In other words, long-term debt at a reasonable interest rate, like a student loan, a mortgage or perhaps a business loan? If your fiancé has this kind of debt and a solid job with a promising career trajectory and a good track record of making payments on time, chances are you're OK.

But what if your intended has a lot of "bad" debt: short-term high-interest debt, like credit cards and car loans that show he's living beyond his means and which he can't realistically pay back? This is the kind of situation that could ultimately put a huge crimp in your lifestyle, serve as a source of tension and perhaps imperil your marriage.

This isn't to say you shouldn't marry this person, but you may want to think about putting off the wedding until your fiancé straightens out his financial situation. Because even though you generally won't be personally accountable for debts your spouse incurred before the marriage, a lot of both of your income will go toward servicing these debts. Maybe you're OK with that. But you may decide that waiting is the best option.

Wife can share in ex-husband's 'post-employment compensation'

A divorced man could be ordered to share with his ex-wife a sum of money that he received from his employer after he stopped working, the Rhode Island Supreme Court has decided.

The husband, Richard Beverley "Bev" Corbin III, had started working with a division of megabank Wells Fargo in July 2006. He signed an agreement to work as an at-will employee for two years. By June 2008, things started to go sour. By September 2008 he and the employer couldn't come to an agreement about his continued employment, so he took part in Wells Fargo's dispute resolution process, signed a departure agreement and release of any claims he might have against the company and was given a $175,000 lump sum payment.

Corbin and his wife Anne subsequently decided to divorce. During the divorce proceeding, a family court judge ruled that the $175,000 lump sum payment represented "back wages" that should be considered part of the marital estate and awarded 50 percent of it to Anne.

Corbin appealed, arguing that Wells Fargo paid him the lump sum as severance pay, which made it "future compensation" which should not count as marital property.

But the Rhode Island Supreme Court disagreed. The court found that because Corbin was an "at will" employee, Wells Fargo didn't need any reason to terminate him and thus had no obligation to provide severance pay absent any specific provision in his employment agreement.

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Prenups far from rock solid if terms aren't fair

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their marital estate should be divided fairly, or subject to what's known as "equitable distribution."

The divorce judge ruled in Earl's favor, deciding that the prenup wasn't unconscionable, and, more importantly, that Christine had waived the right to equitable distribution under state law by agreeing to a clear, unambiguous prenuptial agreement.

But the Michigan Court of Appeals reversed the decision. Specifically, the court ruled that a court always has the power to engage in equitable distribution if circumstances are extreme enough to justify it.

A case out of Virginia also shows that courts may disregard blatantly unfair prenups.

In that case, Mark McKoy of Norfolk, who was a wealthy residential real estate investor, struck up a relationship with a Spanish-speaking woman in the Dominican Republic. Eventually the woman, Glenys, became pregnant with Mark's child and the two made plans to marry.

But before the marriage, Mark sent Glenys — who had an 8th-grade education, spoke limited English and whose sole work experience was selling lottery tickets — a prenup stating that Mark's assets had been fully disclosed to her and that she was waiving the right to any future disclosure of assets. The prenup also deprived her of the right to share in any property he brought into the marriage or any property he acquired during the marriage. It further stripped her of the right to alimony, maintenance or spousal support. Glenys signed the agreement before moving to the U.S. to marry Mark.

After six years of marriage, Mark filed for divorce and asked the court for exclusive possession and use of the marital home and denial of spousal support to Glenys.

The judge ruled against him, deciding that even though Glenys signed the agreement voluntarily, there was such a gross disparity in bargaining power that the prenup shouldn't be enforced. Now Glenys will have the opportunity to seek both spousal support and an equitable division of property.

Planning to move out of state? Your current custody situation matters

According to a recent ruling from a New Jersey family court, your current custody arrangement can make a big difference if you're thinking of relocating to another state with your child.

The mother in that case had emigrated from Cuba in 1999 and lived in Florida until 2004, when she moved to New Jersey to work in pharmaceuticals. That's apparently where she met her husband, who she married in 2009 and with whom she had a daughter.

The couple divorced in 2015. The divorce agreement said they'd share joint legal custody and the mother would be considered the "parent of primary residence." Once the mother vacated the marital home, the father would be the "parent of alternate residence." The father was to have the daughter on Mondays, Wednesdays and alternate weekends. The agreement didn't discuss the issue of out-of-state relocation.

The mother didn't leave the marital home for a year. During that time, the mother, the father and the daughter lived together as a family unit and the mother and father continued to share in parenting responsibilities. Once the mother left the marital home, the father still had daily contact with the daughter, since he worked from home and had the ability to pick her up from activities and take care of her during the day.

A month after the mother moved out, she traveled to Cuba and Florida for three weeks with her daughter. After that, she decided she wanted to move back to Florida and bring the daughter with her. At this point, she invoked the parenting-time provisions in the divorce agreement and only let the father see his daughter twice a week and on alternate weekends.

The father challenged her request to relocate with his daughter. The mother argued that as the parent with "primary physical custody" in the divorce agreement she should be able to bring the child with her. But the family court denied her request, finding that in reality they shared physical custody. The court also decided that there was no way the relocation could take place without seriously harming the child, particularly since the mother didn't present a realistic plan that would allow the father to maintain the significant relationship he had with his daughter.

The lesson here is that if you expect to rely on the specific language of your divorce agreement to work in your favor when later issues arise, it helps if you live up to that language in practice. Of course, the law differs from state to state, so be sure to check with an attorney where you live.

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Wedding cancelled; Jilted fiancé can get engagement ring back

There was a time when many states allowed a person to sue another person for breach of a promise to marry. This resulted in a lot of colorful lawsuits that provided for sensational trials and plenty of entertaining gossip in otherwise dull towns. The ability to bring such suits resulted in runaway verdicts and abuse, which is why so many states have adopted "heart balm" laws that forbid jilted suitors from bringing such cases.

But that doesn't mean a heartbroken suitor has no recourse at all. If a recent Virginia case is any indication, a man who's left at the altar can still sue to recover the engagement ring.

The case involved Ethan, an accountant who proposed to Julia in 2012. But the relationship went bad over the course of the next year and the engagement was called off.

Ethan then went to court to recover the $26,000 engagement ring he'd purchased for Julia. A county judge ruled that he had a legitimate claim and ordered Julia either to return the ring or face a $26,000 judgment.

Julia appealed, arguing that forcing her to return the ring violated Virginia's heart balm law. According to Julia, a lawsuit to recover an engagement ring is no different than a lawsuit over a broken promise to marry. After all, without a broken marriage promise, there's no action to recover the ring.

But the Virginia Supreme Court disagreed, finding that the heart balm law was irrelevant. Ethan didn't sue over a broken promise to marry. Instead he was seeking to recover the ring or its cash value under the theory that it was a conditional gift and the conditions weren't met.

This ends the uncertainty in Virginia over whether someone can sue to recover an engagement ring in the wake of a broken engagement. But the law may differ elsewhere. Talk to a family lawyer where you live to find out the law in your state.