

Elements of a Valid Prenuptial Agreement

The elements of a valid prenuptial agreement vary from state to state, but most of the essential requirements are the same. To make sure your agreement is valid, have it reviewed by at least one attorney. In the best scenario you will have the agreement reviewed by separate attorneys for both you and your future spouse. Some states even *require* that you and your future spouse have independent legal representation when you draft the agreement or they will not enforce it.

A valid prenuptial agreement generally requires the following elements:

- ✓ Must be in writing
- ✓ Must be signed by both spouses
- ✓ Must be signed before the marriage
- ✓ Each party must have time to read and consider the agreement before signing
- ✓ Each person must be free of pressure (duress) at time of signing
- ✓ Each party must fully disclose important information like financial status
- ✓ Each party has his or her own attorney (required in some states)

Problems to Avoid

- × **Invalid provisions.** If your prenuptial agreement contains certain provisions which are illegal, against public policy, or grossly unfair, a court may decide that the entire agreement is tainted and should not be enforced.
- × **The rush to sign.** Signing a prenup right before you walk down the aisle is a bad idea. A valid prenuptial must be read with sufficient time for consideration and must be signed when the parties are free of pressure.
- × **False information.** Premarital agreements are contracts and must be entered into freely and knowingly by the parties. When important information, such as the truth about your finances, is not known, the parties lack sufficient information to enter into the agreement. Failure to disclose certain information or giving misleading information could invalidate the agreement.
- × **The appearance of unfair advantage.** Although prenuptial agreements may be making a comeback, they have been disfavored by the courts for many years. There is a history of using prenuptials to the disadvantage of one spouse (particularly women) who contributed to the household but then had nothing to show for it following a divorce. For this reason, you should make sure that your agreement is fair and there is no indication that one of the parties had more power or influence in negotiating the agreement. One way to show this is to get separate attorneys for each party.

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