



PRENUPTIAL AGREEMENTS THE ESSENTIALS

PLANNING FOR THE FUTURE

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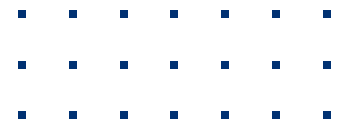
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The Most Significant Legal Contract of Your Life

Mazel Tov! You're engaged! The search for your soulmate is over. You and your fiancé are flying high on love, trust and the promise of your shared future. The plans for your special day are coming together. You've chosen a venue, picked the flowers and decided on the cuisine. But have you figured out how the two of you will meet the challenges of life together?

We enter into legal contracts all the time. When you buy a house there is endless paperwork. You're signing purchasing documents, mortgages, and statements attesting to your understanding of what you're committing to. Opening a bank account means signing volumes of text that you probably don't even read. Even setting up a cell phone plan is a long drawn-out process, overflowing with fine print.

But a marriage contract becomes official with one quick signature. A Jewish couple in Israel is only required to sign one document (the Ketubah), written in a language they don't speak (Aramaic), detailing directives they often don't understand, nor think are relevant.

There are no mandatory manuals for marriage. No volumes of fine print. No proof needed that you understand what you're signing. Smart couples will choose to attend marriage preparation workshops and read some of the thousands of books on the subject. There are Jewish resources abound, to help new couples form a strong and lasting emotional bond.

But where is the *legal* guidance? Many couples are completely unaware that they're entering into the most significant legal contract of their lives.

It's been proven time and again that money is one of the biggest causes of marriage discord. So, talking about your finances is an extremely important conversation to have before the wedding.

There are huge benefits to speaking openly about money before you begin your lives together. Being honest and clear will help you plan resolutions for the inevitable conflicts that come up throughout life.

The discussions you'll have during your prenup preparations will help answer the hard questions. Does an asset that you bring into the marriage become jointly owned after the wedding? Are you responsible for the debts the other already has? How do you divide the assets if, G-d Forbid, your marriage ends?



The Consequences of No Prenup

This is a real case where a couple did not make a prenup. It's a good illustration of why it's so important to do so.

Rami* and Avital* (*not their real names) were married for 35 years. Unfortunately, their relationship had been falling apart for a long time and after counseling, they decided to get a divorce.

They had raised their children together in the apartment they shared for the duration of their marriage. And over the course of their lives, they jointly invested money for repairs and improvements.

Israeli law dictates certain circumstances when ownership of an asset will not be divided equally between divorcing spouses. But Rami expected to get half the value of the apartment he had lived in all his married life. When Avital's lawyer said Rami was not entitled to half, he brought suit in court. Avital wasn't worried because her parents had purchased the apartment for her before she was married and had put it in her name only. She brought in all the documents proving this and was sure the ruling would be in her favor.

But it was not to be. The judge in this case ruled on the two reasons Avital could not consider the apartment to be her asset exclusively. He said the home a family lives in is the crux of the partnership between the two spouses. And the fact that they each contributed to the apartment's repairs and upkeep during their lives together, further solidified that partnership. In regard to an asset acquired before marriage, the onus was on Avital to prove she had notified Rami in advance of her intention to retain exclusive ownership of the apartment.

Unfortunately, she hadn't done that. And previous to the divorce, the subject was never broached. So, with no prenup, and the history of each contributing to the home's maintenance, the judge ruled it would be considered a shared asset and subject to equitable distribution.

Avital's mother was extremely distressed. The gift she and her husband had intended for her daughter exclusively, would now be divided between Avital and her soon-to-be ex-son-in-law. Avital was forced to sell her home, split the sale price with Rami and try to find a place to live that she could afford.



Prenup – Kiss of Death or Act of Love?

You're excited about your future together. You and your fiancé are both good, smart people. You're in love and you would do anything to make your new partner happy. The two of you are still getting to know each other but you share a desire to build a solid and trusting foundation.

Now, I know. You're asking yourself, "If I bring up a prenup won't my fiancé feel I have doubts about our relationship?" The last thing you want to do is sit down and write a legal document designating exclusive ownership of the assets you're bringing into the marriage. Or deciding how you would divide anything you acquired during your years together, in the case of divorce. Talking about it might mean you think it could happen. And you're sure it won't. And you may be right.

But what if I told you there is close to a 30% chance that when you leave your house tomorrow morning you'll be hit by a car? You might think twice about walking out the door. Or at the very least you'll look it up and wonder how to protect yourself.

The overall divorce rate in Israel hovers around 30% –Jewish divorces are very close to that. (And in the United States, it's much higher.) So entering into marriage takes forethought and planning.

A prenup will help you define fairness at the beginning of your relationship while you're in love and caring for each other's needs. It's an act of love to give the person you love, what they deserve and need.

A prenup forces you to think ahead and plan. To have the 'money' conversation. To share very important things about yourself and

learn more about your partner. You'll each have to disclose all your financial details: bank accounts; inheritances; debts; trust funds; property. In the process of detailing your assets and liabilities, you'll have an opportunity to discuss how you want to deal with the conflicts that all happily married couples have.

It's good planning to learn how to disagree before you're in the middle of an argument. And if your marriage ends, G-d Forbid, you won't be deciding on the division of assets in the middle of a divorce, and your legal costs and stress will be significantly reduced. People always think they'll be calm and caring but their vindictive feelings surprise them. One's definition of 'equitable' at the end of a marriage may be completely opposite to that of their spouse's.



What Does a Prenup Cover?

A prenup is a financial contract two people make before their wedding. They can also make a postnup if they are already married or living together in a common-law relationship. Both include (among other things) the division of assets and liabilities during the marriage and in the case of divorce. They can also include alimony, something not given in Israel, except when required by a prenup. A prenup does not cover custody of children or child support. The court will always decide based on the best interest of the child.

Some Things to Consider

- Will each party exclusively own the assets (property, stocks, pensions, inheritance) and liabilities (debts, loans etc.) they had before the marriage or will they share them with each other?
- Do you intend on having joint bank accounts?
- Is property owned prior to your marriage to remain the property of the person bringing it in or will it become commingled into joint property, and if so in what manner?
- Who owns the gifts given to each of you? Does a gift remain that person's separate property or does it become joint property?
- If a gift is received from a family member to purchase a home, will that money (value) remain the separate property of the spouse who got the gift in the event of divorce?

- If you or your fiancé use your private (i.e. not jointly owned) funds to purchase a home, will that money remain the separate property of the spouse who used their personal property in the event of divorce? Or will it be considered a 'joint' asset?
- Do you become responsible for each other's debts?
- If you run a business together with your spouse, how will the business be managed in the event of divorce?

The Agreement Itself

- It must be a written agreement.
- The parties must enter into it voluntarily. No coercion.
- Both parties need to fully disclose their financial assets, debts, inheritance, property etc., before signing. If either fails to do this, the prenup could be invalid.
- The agreement must be fair and equitable in the eyes of the court or the judge may reject it.
- The text must include all the legal requirements.
- Both parties need to sign the document, in front of a judge or have it notarized if it's a prenup. (Postnuptial agreements can only be done in a family court.) If it's a prenup it won't be necessary to appear before a judge, but we suggest that you do. See more on this later.

You might want to think about adding a social media clause. This states that neither one of you can post videos and pictures you've taken during your marriage without permission from the other. There will be punitive damages if either of you does.

If you're entering into a second marriage there will be additional financial considerations. And if you've got kids from the previous relationship, there are some logistical things to consider as well.

Why Should You Affirm Your Prenup in Court?

A court-affirmed agreement is essentially a judgment. This is helpful for the following reasons:

1. It will be easier to enforce the agreement. A court-affirmed agreement has more legitimacy and is more likely to be upheld in Israel and in other countries.
2. You gain protection from the probability of the agreement being challenged in the future.
3. Issues of disclosure. The court requires both spouses to provide information they may not have disclosed otherwise.
4. Legal review. The court will ensure that the agreement adheres to the law, that it is fair and enforceable if needs be.
5. Due to the Judge's question-asking tendencies, the couple will receive more thorough explanations of the clauses in their agreement that they might not have otherwise understood entirely.
6. Future changes. The court is likely to recognize and support adjustments to a judgment that they gave, as long as they are fair and reasonable.

Making Good Decisions

You and your soon-to-be spouse will be making many financial decisions together throughout your lives. By researching alternatives and understanding the consequences before you get married, you'll be better equipped to make solid decisions.

It's your attorney's job to help you join your lives smoothly. He or she will work with you through the discussions and negotiations and bring all the possible legal issues to your attention.

They'll draft the agreement, making sure to prepare it according to all the legal specifications. Then your attorney will accompany you both to the court appearance for signing.

You could do this in front of a notary but I always recommend that a judge officiate it in the Family Court. I say this because in Israel the two legal systems (Rabbinic and Family Court) often don't work together.

Take the extra steps to make your prenup airtight in case someone challenges it down the road.

The Halachic (Jewish Law) Prenup

An agunah is (literally) a chained woman whose husband has refused to give her a Get or Jewish divorce. This prevents her from marrying anyone else and having children. An agun is a man whose wife refuses to accept a Get. It's emotionally just as damaging although much less restrictive.

Rabbi Mordechai Willig developed the Halachic Prenup more than 25 years ago to address these problems. The contract outlines details of conduct so a couple can settle their divorce in a dignified manner. Our office utilizes the halachic prenup prepared by the wonderful Tzohar organization. You can download a copy [here](#).

It's important to note that the Halachic prenup only covers the issue of agunot and agunim. It doesn't address asset division at all. So, a couple must go through the Family Court to manage the financial side of their prenup.



Thank you for downloading my guide. I hope it provided valuable advice and insights to help you plan for your future. Marriage is a beautiful commitment, and while it's easy to focus on the joyful aspects, it's also essential to consider practical steps that provide protection.

With over 20 years of experience practicing law, licensed in both Israel and New York, and as a certified mediator, I've helped many individuals create prenuptial agreements tailored to their unique situations. I'm here to guide you through this important step, ensuring you are protected.

If you're ready to explore how a prenup can strengthen your future, contact us to discuss your needs. You can also find more resources on my website or check out my YouTube channel for helpful videos on marriage and financial planning. We're committed to giving you the tools you need to move forward with clarity and confidence.

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