

# A Harvard Law School Takes a look at Prenuptial Agreements

*Article by: Jeffrey Broobin*

What is The Reason that Most People, Don't Have a Prenuptial Agreement?

A recent release of a paper by a Harvard Law School Olin Fellow explains that about 5 percent of married people have such an agreement, although the facts are that more than 50 percent of marriages end up in a divorce. This Harvard Law graduate explains what she has discovered.

What Inspired Her to Research the Facts on Prenuptial Agreements?

The facts are that more than half of marriages terminate and these once loving couples end up in divorce court, and a microscopic 5 percent have prenuptial agreements in place. Most of the perspective mates upon deliberation decide that if they bring the possibility of a prenup up to there would be intended, it suggests that they are planning for divorce, she concluded. She would investigate why couples were not protecting themselves with prenuptial agreements.

What is the Reason Couples Contemplating Marriage, don't have a Prenuptial Agreement?

The two main reasons that prevent people from asking their perspective partner to sign to a prenuptial agreement.

First of all, as stated previously the majority of couples feel it predicts doom to suggest a prenuptial agreement to their perspective partner. Rumor has it that when Jennifer Lopez asked Ben Affleck to agree to a prenup, Ben Affleck ended the relationship.

The other reason is the majority of couples believe that in spite of the statistics showing that more than half of all marriages end in divorce, it will never happen to them. They believe their there love will overcome any possible obstacles that can occur in their relationship and that their foundation is unbendable and more stable than most people, and divorce will never happen.

Is it true as the courts have stated that prenuptial agreements are not absolutely contrary to promoting the stability of marriage?

The reality is a Prenuptial Agreement can create a situation where the marriage will be more difficult to terminate rather than easier to end. You can design a prenup that states divorce can not happen unless a travesty has occurred, like being unfaithful or whatever you decide is important as a couple. And in contrast, the majority of states accept no fault divorce.

Is it a fact that when prenups have additional instruction besides divisions of assets and state specific provisions when a divorce can occur, be upheld in court.

To the best of my understanding this type of Prenuptial Agreement has not been tested in divorce court. In past years every state insisted that a spouse show fault before a divorce could be granted. But there are states that accept an agreement for a "covenant marriage" where one spouse will be required to show fault before filing for divorce. It would be unlikely that any court would limit a couple's prenup because it has requirements for a divorce.

Are children of divorce more likely to have a Prenuptial Agreement before they marry?

Shocking as it seems, the answer is no! As stated previously the reasons couples don't have a prenup in place is not logical but emotional. Neither partner wants to create a situation that predicts doom. There are also other significant factors that should be mentioned. 1) If one of the partners has wealth, it is likely they will insist on a prenup. If you are married it is unlikely you will ask for a prenup. 3) Women will usually not insist on a prenup.

Would you suggest that Prenuptial Agreements be Mandatory?

It is important to understand why a prenuptial agreement is a win, win situation for both parties. After examining the research above, I would recommend a prenup. A mandatory prenuptial agreement would be beneficial to couples. It would eliminate that uncomfortable discussion of bringing up the matter because everyone would be required to deal with it as a matter of law, even if they feel they will never divorce. Also the practice may eliminate unrealistic optimism of what the future may bring. Since everyone that marries will have a prenuptial agreement it will create a smoother transition into marriage. If this law was in place perhaps Jennifer Lopez and Ben Affleck would still be together? Jeffrey Broobin is a free-lance writer on family and finance issues; his main goal is to help people during their complicated period of life. Website: [www.legalhelpmate.com](http://www.legalhelpmate.com) Email: [jeffreymb@legalhelpmate.com](mailto:jeffreymb@legalhelpmate.com)