



# Stick the Landing

Handling Prenuptial Planning  
and the Conversations  
That Follow







More couples than ever are choosing to take control of their marital finances through a prenuptial agreement (a “prenup”). Recent research found that the share of engaged or married people who signed a prenup rose from 3% in 2010 to 15% in 2022.<sup>1</sup> But knowing that you want or need a prenup is different than knowing how to obtain one. While [our prior research](#) discussed the requirements for a prenup and common issues they address, we wanted to delve deeper. So, we turned to experts for guidance on how to think and talk about your agreement with your partner and other interested parties.<sup>2</sup>

## Meet the Team

For purposes of this research, we interviewed lawyers who specialize in family law. They bring a wealth of knowledge and experience to the table, with a combined 81 years in the field and numerous accolades to their names:

**Geniveve J. Ruskus**—Partner at Lakin Spears, LLP in Palo Alto, California  
<https://lakinspears.com/attorneys/geniveve-j-ruskus/>

**Lindsey Obenhaus**—Partner at Goranson Bain Ausley, PLLC in Dallas, Texas  
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**Maureen McBrien**—Partner at Brick, Jones, McBrien & Hickey, LLP in Needham, Massachusetts  
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**Sherri Sharma**—Partner at Mosberg Sharma Stambleck Gross LLP in New York, New York  
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<sup>1</sup> <https://theharrispoll.com/briefs/popularity-of-prenups-rising-2022/>

<sup>2</sup> Applicable law varies by state. Please consult a legal professional for further guidance.

**While not everyone needs a prenup, our experts agree that couples should understand the default “financial rules of the road” if you plan to get married without one.**

**Q. Who should consider entering into a prenup?**

**Geniveve:** The way that I frame it for folks is to understand that California already has what I call a “default prenup.” What I tell people is that my personal belief is that everybody who is getting married should have an hour with a family law attorney just to learn what the default prenup is. And then [they can] decide, okay, that’s basically fine. Or, are there any red flags about their personal situation or parts of California law that they don’t really agree with? Because, if they feel that way, the only way to change it is with a prenup. My view is not that everybody needs a prenup. Everybody does need a consultation with a lawyer before they get married.

**Lindsey:** We live in a world right now where rising dual-income households are prevalent; most women are going to be in the workforce at some point—especially at the time that they enter marriage—and also people are coming into relationships with debt or with parents giving them gifts. These are all really common “pins in the landscape” that I see with people who are engaged or are looking to enter a marriage. And when [a client] comes to me for a prenup and says, “My dad says I need this” or “My financial planner says I need this” and “But why do I need this?”...I tell them that marriage is a legal construct. And for that reason, [individuals] usually need some legal advice going into it, especially if they have any of these pins in the landscape that I just described.

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**A marriage bears certain similarities to a business partnership, and it can help to view a prenup like a partnership agreement. Additionally, a prenup can promote harmony, rather than gamesmanship, if a couple’s finances change.**

**Q. How do you think about a prenup? How would you encourage clients to think of them?**

**Geniveve:** I don’t view prenups as divorce planning documents. I’ve actually written an article that compares it to a partnership agreement for a new business. Because you would never go into business with someone without talking about, “As income comes in, how are we going to divide it? As expenses come up, how are we going to tackle [them]? Are we going to have regular meetings?” All of that...the ongoing operation of the business of the marriage. And then also, “What happens if one of us dies or if we separate?” A good partnership agreement would address all of those topics.

**Lindsey:** It’s just like starting a business. You’re starting a financial business with your spouse. Just like we would create articles of incorporation or any other formation documents for your business, let’s say what it’s going to look like and how we’re going to run it. That’s usually the most productive way to start a conversation or education about what is marital property, why is this a legal [concept], and what do we want to do with it.

**Maureen:** Prenups do take [judicial] discretion out of the equation, which offers a lot of peace of mind and maybe supports people staying in marriages. Because they know that at least they have the prenup and they’re not exposed, as opposed to a couple who doesn’t have a prenup and their marriage is on the rocks. If one [member of this latter couple] knows they’re coming into an inheritance soon or their company is being sold, they may think, “I’ll be wealthy soon and maybe I should get divorced before that.” I think prenups from that perspective are good. They promote some harmony [in a situation] that might otherwise cause a lot of problems in the marriage.



**Despite differences in wealth, each party to a prenup comes to the table with certain legal rights granted by state law. By recognizing this potential leverage and identifying what is important to each person, the couple can create an agreement that benefits both parties.**

**Q. How can couples address perceived power differences during the negotiation process?**

**Geniveve:** Somewhere along the way, I started representing the wealthier spouse more than the less wealthy one. But I used to have a lot of clients who had received a prenup, they would come in and they were very afraid. They were very nervous, and they did see them as divorce planning documents. You know, unromantic, kind of scary, legalistic things, right? And I tried to impress upon them that a good prenup should benefit both people through a sense of clarity, expectations, education, and control over your entire world. Because, whether you know it or not, there's already a [default] prenup.

**Sherri:** If the process of putting a prenup in place is collaborative, that generally puts the less monied party at ease and sets a positive tone. For this reason, I encourage my clients to be transparent about why they are seeking a prenup with their future spouse and to ask a lot of questions. When there is an ongoing dialogue between the parties and both parties have input, that ensures the smoothest, least adversarial dynamic. It is important that the non-monied party understand that a prenup can be an opportunity for them to actually ensure greater financial security than what they might have without a prenup. For this reason, I make it my regular practice to reach out to the attorney for the less monied party and understand what their client is concerned about. Are they worried they might stop working when they have children? Are they wondering how they will secure housing if the marriage ends? Once we know what matters, we can preemptively address it and provide reassurance.

**Parents concerned about a child's inherited wealth can craft transfer strategies that make a prenup less necessary or that bolster a child's ability to protect their inheritance. Parents looking to introduce the idea of a prenup to their children may consider scheduling a consultation with a lawyer. This can help confirm the need for an agreement and set the stage for a productive conversation.**

**Q. What if parents want their child to get a prenup? How can parents educate themselves and be helpful to the process?**

**Geniveve:** At least once a month, I get a call from a parent, "My kid is getting married next month. Do they need a prenup? What should I be doing? What can I do? What if my kid doesn't want a prenup? I don't want to get off on a bad foot with the spouse." Sometimes I'll do coaching meetings with the parents and explain to them that they don't necessarily need a prenup. If you are making sure that when you [make] gifts or transfers, it's always just to your child's name and your child is segregating those monies. You can even do a generation-skipping transfer if you don't want the spouse to be involved.

**Sherri:** I often hear from parents who are seeking a prenup for their child "They would never be doing this if it weren't for me." My advice for the parents is they should try and explain why a prenup is in the child's best interests. To do so, they need an understanding of the default law—which I walk them through—and how the prenup might solve for any areas of exposure. I also advise that the parents should emphasize that this is part of their family financial planning and is in no way personal to their child's future spouse.

**A couple can and should personalize their prenup according to their values and goals. A good start is to consider what topics you want to address under the agreement and what life changes you anticipate in your future.**

**Q. How can clients identify what they want to cover under the prenup?**

**Maureen:** People come to me with different levels of knowledge and conversation that they've already had. Sometimes I'm engaging with, "How did you get here? Tell me whose idea this was? What's your intention? What are your objectives? Have you thought about spousal support? Do you want to leave that silent? Do you want to include it? Here's what you should consider with respect to that. Do you want to have kids together? Do you intend to give up your career to take care of the kids? Do you think he would give up his career?"

**Sherri:** Sometimes [the client] really wants to understand the law and so we provide them with a primer on New York law in a very sort of simplified way. And then we provide a menu of options. Sometimes that menu is very broad because—even after the initial call—they really want to consider all of the options. Sometimes the menu is really targeted based on the call that we've had. So, within each of the sections of the prenup pertaining to the division of assets, spousal support, and estate rights, there are choices that they can think about.

The prenup is not just about protecting yourself. It is also about learning to tackle difficult conversations and get on the same page about important issues.

**Honesty is the best policy when it comes to your intentions and purposes for seeking a prenup. Clear communication about your needs and goals for your marital partnership can help couples broach a difficult topic and establish healthy money habits moving forward.**

**Q. What recommendations would you make regarding communication during this period?**

**Sherri:** The first thing is to bring the prenup up early, so no one feels that you're doing this out of the blue or springing it on them right before the wedding. There have been many occasions when—despite the prenup being generous—the process was extremely tense because the prenup was introduced at the last minute. The other thing is—I think it is important to be honest about why you're doing a prenup. It's better to be honest and upfront about one's finances. While it can be a sensitive subject, the less wealthy party is always appreciative when they have clarity about the assets in play. People may feel embarrassed about their family wealth. I tell my clients to the extent that you don't keep your fiancé in the dark about those things, that's the best course. I tell them to be clear that they want to hear what's important to their future spouse—to listen more than they talk. I tell them the prenup is not just about protecting yourself. It is also about learning to tackle difficult conversations and get on the same page about important issues like how you're going to pay joint expenses, if one party will take time off when they have children or when you will purchase real estate and where.

**Lindsey:** I think introducing the idea of a prenup can cause World War III at a time when you don't want to cause World War III. I think a lot of people's default is to blame the bank, blame the trust, blame a family member or whatever, but I don't know if that always goes so well having represented people in both seats. I think that's why the business formation analogy works pretty well. Because the basic concept is that they're partners in a business together and how do they want to run their business. And one partner may have a duty to someone else outside of the marriage that just comes with them, and they have to honor that duty.

**Goniveve:** The other thing I tell people is, "Look, I know you're scared." They always say it's going to be easy and they agree on everything. It's going to be super simple. And that's so great! But also, if you don't agree on everything, wouldn't it be nice to know that now and not 20 years later when you've had kids and you're invested. If you have core disagreements around money, this would be a really great time to uncover that, as scary as it is. I just encourage them to be brave and have those difficult conversations now and most people are able to do it.



**Disagreements that arise during the negotiation process are hard on everyone, especially given the heightened emotions during this period. However, reframing your perspective about the issue at hand and the agreement's underlying purpose can shake loose a solution and help parties move forward.**

**Q. How do you approach disagreements during the negotiation process?**

**Lindsey:** Take a pause. I would have an in-person, face-to-face meeting with the client and go back to my years of experience and the wealth of knowledge of my firm to generate multiple ideas to put on the table. There are so many ways to untie a knot. And I think, if we can put our heads together and come up with a completely different way of looking at the issue while understanding all of the interests involved, there's always something we can do. I think slowing down and taking a look at the big picture helps you reframe the issue. This is when you can get really creative solutions that come out of a disagreement.

**Sherri:** It really is dependent on the client in this case. With respect to a recent example, there were certain things that the client at the end of the day didn't care about and I tried to remind the client, "What is your goal? What did you come into this process wanting to do?" In this case, it was to protect money that was going to be inherited and a trust of which he was the beneficiary, so he should care less about adjusting certain provisions that had nothing to do with that. It was just a reminder of the "big picture."

**Couples should enter into prenups only after considering both their goals for the future and the possibility of unforeseen hardships. This can be a slow process and may make the prenup negotiation more difficult than initially expected. Moreover, couples will need to revisit their early conversations after hiring counsel. This is because they must come to a mutual agreement with a clear understanding of what they are giving to and getting from their partner.**

**Q. What is a common misconception about prenups? What do you want people to know about them?**

**Maureen:** I caution people that they can't predict the future. When you're negotiating something that's going to be implemented in the future, you should put a lot of thought into what you're giving up and what you're getting.

**Sherri:** Everyone thinks their prenup is going to be super straightforward. I've heard a number of times that "this is going to be really simple and straightforward" and "we're aligned." I think people don't realize that you can't rely on things that you may have agreed to before anybody talks to a lawyer because nobody knew what they were entitled to, and nobody knew what they were waiving.

**The More You Know...**

The process of creating a prenuptial agreement presents couples with an educational opportunity. By working with counsel, they can better understand which, if any, aspects of their state's default law they wish to change. They can also find empowerment through a greater understanding of their separate and shared wealth before and after saying "I do." More importantly, couples who are willing to delve into their underlying values, goals, and shared vision for the future can improve their communication about wealth and their roles as partners. This can ultimately strengthen, rather than harm, their relationship.







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