Common Prenuptial Agreement Mistakes and How to Prevent Them

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By Amber Cohen on July 8, 2026

Most couples recognize that a prenuptial agreement is more than just a legal document. It is a practical tool for protecting assets, clarifying financial expectations, and ensuring both partners enter the marriage with a shared understanding of their rights and responsibilities. When approached thoughtfully, a prenup promotes transparency, reduces the likelihood of future disputes, and helps lay the foundation for a stronger financial partnership.

However, it may also feel uncomfortable and transactional at a time that's meant to be more emotional and joyous. This can lead many to rush through the process without truly giving it the attention it needs.

Our Massachusetts family lawyers at Cohen Cleary, P.C. understand that this can be an uncomfortable situation, and we are here to help guide you through it.

Why Prenuptial Agreement Errors Are Costly in Massachusetts

Some errors in your prenuptial agreement might be negligible in their impact on a divorce. However, some can be incredibly costly if they invalidate the prenuptial or render sections unenforceable. When this happens, you lose the protections you thought you had in place, and the money spent negotiating and drafting the document is essentially wasted.

What Are the Most Common Prenuptial Agreement Mistakes?

There are countless errors you can make in any legal document, but we see several more often than others when we work with clients establishing a prenuptial agreement or referencing one during a divorce.

Not Disclosing All Assets and Debts

Full transparency regarding your debts and assets is critical to a fair and enforceable agreement. In fact, both signatories must have been fully aware of the financial circumstances of the other at the time of signing. If you have over or underinflated your worth at the time of the marriage, you may find that you are now subject to the standard definition of what Massachusetts considers individual or marital property.

Signing Too Close to the Wedding

Sometimes, signing a prenuptial agreement too close to the wedding date can be a red flag for the courts. It may suggest that the person was coerced into signing the agreement under duress, rather than agreeing of their own free will. It might also suggest that the process was

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rushed and both parties were unable to thoroughly negotiate, review, and agree to the terms. Give yourself ample time for the drafting, negotiation, and review of the contract prior to signing and marrying.

Sharing an Attorney

One of the major benefits of working with an attorney is that you have someone who is only looking out for *your* best interests. If you are using the same attorney, it may leave the court questioning whether the agreement is fair and whether your interests are truly represented. It is best for both parties to have their own attorney to represent them in the preparation, negotiation, and finalization of the agreement. In the event of a separation, this helps the agreement to hold up as it suggests that both parties were adequately represented in the contract.

Signing Under Duress or Coercion

Flags such as a last-minute agreement, sharing an attorney or not having one, or evidence that one person signed the agreement under threat of physical harm can be indicators that the agreement was not voluntary. Additionally, any evidence that one party was exploited into entering the agreement through factors such as immigration status, pregnancy, or other vulnerabilities may void the contract.

A prenuptial agreement can be an incredible tool, but only when it is used collaboratively, not as a means of controlling the other person.

Including One-Sided Terms

Much like any other form of agreement, a judge is unlikely to approve of a prenuptial agreement that leaves one party with nothing while the other takes everything of value. This may also include clauses that waive alimony or require excessive alimony to support extravagant lifestyles. If the scales are too greatly unbalanced, a court may find that the order is unfair and unenforceable.

Including Unenforceable Provisions

Marriage is both a legal and emotional joining, and it makes sense that you would take steps to protect yourself should one person not hold up their end of the marriage contract. However, you cannot enforce terms that instill penalties for things like not cleaning the house enough, not making enough money, or gaining weight. Such provisions are likely invalid and against public policy.

Additionally, a judge is likely to invalidate a clause that incentivizes ending the marriage.

Including Lifestyle Clauses

While a prenuptial agreement can be a great way to facilitate important conversations and set expectations, you cannot include lifestyle expectations in an enforceable prenup. This may include things like requiring a set number of vacations each year, a frequency of intimacy, or other terms that affect the social and intimate aspects of your life.

Using a Generic Online Template

Weddings are expensive and time-consuming, and we know how tempting it can be to save time and money by using an online template for your prenup, rather than investing in negotiations

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and attorneys. However, carelessness in drafting might lead to decreased protection or an invalidated agreement.

Using Vague or Ambiguous Language

When your prenup uses vague language, it leaves room for interpretation, which may take what was a simple agreement and turn it into prolonged litigation based on lack of clarity. Be sure to define terms with specificity.

Leaving Out a Severability Clause

A severability clause can protect you if a judge determines that one portion of your prenup is void or unenforceable. This clause states that the remaining sections of the agreement are still valid. Otherwise, you may find that voiding one clause renders the entire agreement invalid.

Not Accounting for Future Assets and Circumstances

Creating a prenup is a great move to protect the assets you bring into the marriage. However, this may have minimal impact if you fail to account for how these assets may appreciate or change over time.

Not Updating the Prenup After Major Life Changes

As your relationship and life circumstances change, you may find that the initial prenup that you made years ago doesn't quite fit your circumstances or needs now. Many people don't realize that they can amend the prenup to ensure it still makes sense and meets the couple's needs.

Failing to Consider Tax Implications

If you have not thoroughly considered how your prenuptial arrangement may affect taxes, you can find yourself facing significant liabilities after a divorce. This may include taxes related to asset transfers and capital gains, the impact of alimony payments, and countless other considerations.

Not Giving Enough Time to Review

Both signatories must have adequate time to not only review the agreement, but seek legal representation to review it as well. If one party presents the agreement to the other without allowing adequate time for review, the court may find the agreement invalid.

Failing to Meet Formal Execution Requirements

In order to have a legally enforceable prenuptial agreement, it must meet at least the following criteria:

- Completed in writing
- Signed before the marriage (ideally at least 6-8 weeks prior)
- Signed willingly and free of coercion or duress
- Signed with the full financial disclosure of both parties

Additionally, it is often wise to have the document notarized. While this is not necessarily required for validity, it often adds to the legitimacy of the situation and minimizes disputes surrounding the authenticity of the signature(s).

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How Massachusetts Courts Decide if a Prenup is Enforceable

When determining enforceability, a judge will typically look at your agreement to determine whether it was entered into voluntarily and fairly, whether both parties understood and were represented by counsel, whether it violates any laws, and whether it is overall balanced and fair. They may consider other factors on a case-by-case basis, but working with a family law attorney will typically do the most to help you draft and sign an enforceable prenuptial agreement.

Speak With a Massachusetts Prenuptial Agreement Attorney Today

Whether you have a prenup that you fear will not stand up to scrutiny, you need an update, or you are looking for a firm to help you draft an agreement, the team at Cohen Cleary, P.C. is here to help. Call us today to schedule a case consultation and learn more about the next steps to build a stronger foundation for your marriage.

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