MOCK LAW LITIGATION

FREE GUIDE

The Silicon Valley Prenup

Protecting a Business, Equity, or Inheritance Before You Marry — and What to Know About “Gray Prenups” for Later-in-Life Marriages

A complimentary guide from Mock Law, APC | www.mmocklaw.com | 415.523.7969

READ ME FIRST!

A Note Before You Begin

A premarital agreement is not a sign that a marriage is expected to fail. For founders, equity holders, business owners, and people remarrying later in life, it is simply financial planning — done honestly, together, before the wedding rather than argued over after a separation.

This guide explains what a California premarital agreement can and cannot do, what the law requires for one to hold up in court, how to protect a business or equity, and — because a growing share of the people asking us about prenups are not 28-year-old engineers but people in their 50s and 60s marrying for the second or third time — a dedicated section on the special issues that come with a “gray prenup.”

This guide covers:

- Why the Bay Area's founders and later-in-life couples especially need a prenup
- What a California premarital agreement **can and cannot** do
- The **legal requirements** that make an agreement hold up — and the mistakes that void one
- Protecting a **business, startup equity, or a large RSU/stock payout**
- Protecting an **inheritance** or family wealth from commingling
- The **“gray prenup”**: inheritance for children from a prior marriage, long-term care, and estate coordination
- **Postmarital agreements** — and why courts scrutinize them more closely than prenups
- A realistic **timeline** and answers to frequently asked questions

Important Disclaimer:

This guide is provided for general educational purposes only and does not constitute legal advice. California premarital agreement law has real, technical traps (a signature a week too late can void the whole agreement) — this guide is meant to help you walk into a conversation with an attorney already informed, not to replace that conversation. Every situation is different. Please consult a qualified California family law attorney before making decisions based on this guide.

Warm regards,

Mock Law, APC

Table of Contents

PART 1

Why Silicon Valley Is Prenup Country

The Bay Area has an unusually large share of the two populations who most need a premarital agreement: people whose wealth is concentrated in a single hard-to-value asset (private stock, a startup, a vested and unvested equity stack), and people marrying later in life with assets, children, and estate plans already in place from a prior chapter of their lives.

- **Founders and early employees.** Equity that is illiquid, unvested, or subject to a vesting schedule creates characterization problems in a marriage that are very different from a simple paycheck — and very different from what most off-the-shelf prenup templates anticipate.
- **Business owners.** A business built or growing during the marriage can become partially community property even if you started it beforehand. A prenup lets you decide those rules in advance instead of litigating them later.
- **People remarrying later in life.** Second and third marriages increasingly involve two people who each already have a house, a retirement account, a family business, and children who are watching to see whether their inheritance is protected.

PART 2

What a Premarital Agreement Can — and Cannot — Do

What It Can Do

- **Characterize property as separate.** A prenup can specify that property you bring into the marriage — a business, a home, a brokerage account, equity grants — stays your separate property, including its future growth, rather than becoming partially community property simply because you were married while it appreciated.
- **Address a business or equity directly.** It can set rules for how a business you own (or found during the marriage) will be valued and divided if you divorce, including whether your spouse waives any community interest in its growth.
- **Protect an inheritance.** Inheritances are already separate property under California law (Family Code § 770), but a prenup can add clear rules about not commingling inherited funds with joint accounts — which matters because commingled separate property can lose its separate character.
- **Define how debt is handled.** It can specify that debt one spouse brings into the marriage (student loans, a business loan, a mortgage) remains that spouse's sole responsibility.
- **Set (limited) spousal support terms.** A prenup can address spousal support, but a provision waiving or limiting spousal support is not enforceable unless the spouse against whom it would be enforced was represented by their own independent attorney when they signed — and even then, a court can refuse to enforce it if it is unconscionable at the time of a divorce (Family Code § 1612(c)).

What It Cannot Do

- **Decide child custody or child support in advance.** Custody is decided based on the child's best interests at the time of a case, and child support belongs to the child, not the parents — neither parent can bargain it away in a prenup.
- **Be unconscionable.** A court can refuse to enforce terms that are extremely one-sided, particularly if they were also entered into without fair financial disclosure.
- **Be signed under pressure.** An agreement signed under duress, fraud, or undue influence — including being presented with a take-it-or-leave-it prenup days before the wedding — can be thrown out entirely.

PART 3

The Legal Requirements: Making a Prenup That Holds Up

California premarital agreements are governed by the Uniform Premarital Agreement Act, codified at Family Code §§ 1610–1617. Courts scrutinize these agreements carefully, and any one of the following mistakes can void the entire agreement:

- **In writing and signed by both parties.** An oral agreement, no matter how clear, is not enforceable.
- **Full and fair financial disclosure.** Each party must disclose their assets, debts, and financial obligations before signing. A prenup signed without real disclosure is vulnerable to being thrown out later, precisely when you need it most.
- **The seven-calendar-day waiting period.** Since a 2020 change in the law (Family Code § 1615(c)(2)(B)), there must be at least seven calendar days between the date the final version of the agreement is first presented and the date it is signed — and this now applies no matter whether both parties have attorneys.
- **Independent legal counsel.** Each party should have their own attorney. If one party goes unrepresented, they must be advised in writing to get their own lawyer, and any spousal support waiver from that unrepresented party will not be enforceable regardless of what the agreement says.
- **Voluntariness.** The agreement must be free of duress, fraud, undue influence, or incapacity.

The practical takeaway: start the prenup conversation months before the wedding, not weeks. An agreement rushed at the end is often worth less than no agreement at all, because a rushed agreement gives your spouse's future attorney an obvious argument to invalidate it.

What Does “Unconscionable” Actually Mean?

This is the word that does the most work in prenup litigation, and California law actually uses it two different ways depending on what part of the agreement is being challenged.

- **Unconscionable at execution (the whole agreement).** Under Family Code § 1615(a)(2), a party can void the entire agreement by showing it was unconscionable when signed *and* that they were not given fair, reasonable, and full financial disclosure. Section 1615(b) specifies that unconscionability is decided by the judge “as a matter of law” — not by a jury.
- **Unconscionable at enforcement (spousal support only).** Family Code § 1612(c) adds a second, separate test that applies only to spousal support provisions: even a validly signed waiver can be refused enforcement if it would be unconscionable at the time the divorce actually happens — years or decades later.
- **No bright-line definition.** The California Supreme Court held in *Marriage of Pendleton & Fireman* (2000) that a spousal support waiver is not automatically against public policy — but left the door open for waivers to be struck down later depending on the parties' circumstances when enforcement is sought. Later appellate decisions, *Marriage of Facter* (2013) and *In re Marriage of Zucker* (2022), compared what the waiver actually paid to what a support order would likely have been without the agreement; in *Zucker*, the waiver amounted to roughly one-tenth of the support that would otherwise have been ordered, and the court found that unconscionable.

Can a Prenup Tie Support to Public Assistance Eligibility?

California deliberately left this out of the statute — when the Legislature adopted the Uniform Premarital Agreement Act in 1985–86, it specifically deleted model language that would have let a court override a support waiver on public-assistance grounds. But nothing stops the parties from writing that protection into their own agreement: a contractual “safety net” clause guaranteeing support sufficient to keep a spouse above the public-assistance threshold is not a statutory requirement, but it is exactly the kind of provision that makes the rest of a support waiver more likely to survive an unconscionability challenge under § 1612(c). It is worth discussing by name with your attorney rather than assuming a generic waiver clause covers it.

PART 4

Protecting a Business or Startup Equity

A prenup can do real, specific work here that a generic template cannot:

- **Lock in the starting value.** Establishing what the business or equity was worth (or how many shares/units existed) as of the marriage date creates a clear baseline for what is separate property versus what growth, if any, will be shared.
- **Decide how appreciation is treated.** Without an agreement, California uses judicially-created formulas (often called *Pereira* and *Van Camp*) to apportion a business's growth between separate and community property — formulas that are expensive to litigate and unpredictable in outcome. A prenup can specify in advance which approach applies, or that all growth remains separate property.
- **Address unvested and future equity.** New grants, refresh grants, and unvested shares that will vest during the marriage can be addressed specifically, rather than left to a case-by-case characterization fight at divorce.
- **Protect the company itself, not just you.** If you are a founder, your co-founders, investors, and cap table also benefit from a prenup that keeps your spouse's community property claim to your equity from ever becoming the company's problem — a messy divorce with an unresolved equity claim can complicate a financing round or an acquisition.

PART 5

Prenups and Children: A Line the Law Will Never Let You Cross

We still see couples surprised by this: a California premarital agreement can never determine, limit, or waive anything about child custody, visitation, or child support. Not partially, not with both parties' full agreement, not even with independent counsel on both sides. This is not a gray area the way unconscionability is — it is an absolute rule.

- **Child support cannot be touched, by statute.** Family Code § 1612(b) states in full: “The right of a child to support may not be adversely affected by a premarital agreement.” The California Supreme Court confirmed this directly in *Marriage of Pendleton & Fireman* (2000).
- **Any child support term still runs through the guideline calculation.** If a couple divorces, child support is calculated using California's statewide guideline formula (Family Code § 4055) based on both parents' actual incomes and custody timeshare at that time — not according to any number a prenup might have listed years earlier.
- **Custody and visitation cannot be pre-decided either.** Parents may discuss and even agree on custody arrangements, but they cannot use an agreement to take away the court's authority to independently decide, and later modify, custody and visitation based on the child's best interests at the time the issue actually arises (*Marriage of Goodarzirad* (1986) 185 Cal.App.3d 1020).
- **The rest of the agreement still stands.** If a prenup includes language purporting to address custody, visitation, or child support, that specific language is simply unenforceable — it does not void the property, business, or spousal support provisions elsewhere in the same agreement. Well-drafted prenups avoid the subject entirely.

PART 6

Capping a Big RSU or Stock Payout

This is one of the more sophisticated, and more common, requests we get from tech professionals and founders: providing for a spouse fairly without letting an unusually large stock payout — an IPO, an acquisition, a surprise vesting cliff — hand a windfall unrelated to the actual marriage. A prenup can do this, but it takes careful, specific drafting rather than a generic waiver.

- **Understand the default rule first.** Without a prenup, RSUs and stock options fully vested during the marriage are community property, split 50/50. For grants that vest after separation, California courts apply a time-rule formula — either *Hug* (1984, measured from the start of employment) or *Nelson* (1986, measured from the date of grant) — to calculate what fraction of the eventual shares belongs to the community. If the stock's value later multiplies far beyond what anyone expected, that same fraction still applies to the much larger number.
- **A prenup can replace the formula altogether.** Rather than leaving the outcome to *Hug* or *Nelson* years later, a prenup can specify in advance exactly how equity compensation will be characterized and divided.
- **A dollar cap, rather than a percentage, protects against windfalls specifically.** One structure that works well: instead of a percentage of whatever the stock turns out to be worth, the agreement defines a fixed dollar amount (or a formula tied to salary or years of marriage, not share price) that the community is entitled to, regardless of whether the stock is later worth ten times more or considerably less than expected.
- **Provide for your spouse through a different, more predictable channel.** A cap on equity does not have to mean an ungenerous outcome — a defined share of other property, a support formula tied to the marital standard of living, or a fixed buyout number can let your spouse rely on something concrete.

- **The unconscionability rules work differently here.** A property division cap is evaluated for unconscionability only as of the day the prenup was signed (Family Code § 1615(a)(2)). Spousal support terms are different — a support waiver or cap can still be challenged as unconscionable at the time of the divorce itself (Family Code § 1612(c)).
- **Full disclosure of the equity itself is essential.** The disclosure exchanged before signing should clearly describe what has already been granted, the vesting schedule, and the realistic range of outcomes.

PART 7

Protecting an Inheritance or Family Wealth

Money and property you inherit are already your separate property under California law, whether you receive them before or during the marriage (Family Code § 770). So why put inheritance in a prenup at all? Because the risk to an inheritance almost never comes from the law itself — it comes from commingling.

- **Commingling is the real threat.** If you deposit inherited funds into a joint account, use them to renovate a jointly titled home, or otherwise mix them with community property, you can lose the ability to trace and prove they were ever separate.
- **A prenup creates a paper trail requirement.** It can require that inherited or gifted funds be kept in a separate, individually titled account, and it gives you a contractual — not just a hoped-for — basis to recover those funds if a divorce happens.
- **It can address inherited family businesses or property.** Family real estate, a family business interest, or an anticipated future inheritance can all be addressed by name, which is particularly useful when parents want assurance that what they pass down will not become part of a divorce.

PART 8

The “Gray Prenup”: Marrying Later in Life

A growing share of premarital agreements in California are not signed by people in their 20s planning a future together — they are signed by people in their 50s, 60s, and beyond who are marrying for the second or third time, and who are protecting wealth they have already built separately, over an entire working lifetime. A “gray prenup” has a genuinely different purpose from a young couple's prenup, and it deserves its own planning conversation.

Preserving an Inheritance for Children from a Prior Marriage

This is usually the single biggest concern in a gray prenup. Under California's default rules, a surviving spouse already owns their half of the community property outright — that was never yours to give away. But without a prenup and a coordinated estate plan, your new spouse can also end up with a significant share of what you thought would go to your own children:

- **Dying without a prenup or estate plan.** If you die intestate, your surviving spouse inherits all of the community property and a portion of your separate property — one-half if you have one child (or the issue of one deceased child), one-third if you have more — with your children from a prior marriage splitting only the remainder (Probate Code § 6401).
- **A prenup and an estate plan have to say the same thing.** A premarital agreement can have your new spouse waive their inheritance rights to your separate property, letting you direct it to your children — but that waiver only works if your will or trust is drafted consistently with it. We regularly see prenups that were carefully done, paired with an outdated will that never got updated to match.

- **Consider a QTIP or similar trust structure.** Many people in gray remarriages want their new spouse provided for during that spouse's lifetime, but want the principal to ultimately go to their own children. A QTIP (qualified terminable interest property) trust, coordinated with your prenup, is a common way to do both.

Protecting Separate Property You Already Worked For

- **Name the specific assets.** A house owned free and clear, a 401(k) or pension earned over 30 years, a business interest — these should be identified specifically in the agreement, not left to a general “what's mine stays mine” clause.
- **Address the marital home carefully.** If one spouse moves into a home the other already owns, or if separate funds improve a jointly used home, that home's separate-property character can blur over time without clear, written terms.
- **Plan for a shorter marriage.** Gray marriages are statistically more likely to be shorter in duration than a first marriage — it is worth thinking now about how support and property division should work if this marriage lasts five years rather than thirty-five.

Rising Medical Costs and Long-Term Care

As spouses age, healthcare and long-term care costs become one of the largest financial exposures either of you will face — and marriage changes who is legally and financially connected to that exposure.

- Marriage can affect responsibility for a spouse's medical and long-term care costs, and can affect Medi-Cal eligibility calculations, which look at a married couple's combined resources. This is worth a conversation with an elder law attorney alongside your family law attorney.
- A prenup cannot override government benefit rules, but it can set clear expectations between spouses about healthcare costs, long-term care insurance premiums, and caregiving responsibilities.

- Coordinate with advance directives and powers of attorney — a gray prenup pairs naturally with updating an advance health care directive and durable power of attorney for each spouse.

A Quick Gray Prenup Checklist:

- List every asset each of you is bringing into the marriage — by name, not by category.
- Decide, in writing, what happens to your separate property if you divorce and if you die first.
- Make sure your will or trust says the same thing your prenup says.
- Talk about long-term care and health costs explicitly, including insurance.
- Update retirement account and life insurance beneficiary designations — a prenup does not automatically change a beneficiary form.
- Tell your adult children what you are doing, if you are comfortable doing so.

PART 9

Common Mistakes That Get Prenups Thrown Out

- **Signing too close to the wedding.** Violating the seven-calendar-day rule is one of the most common, and most avoidable, reasons a California court refuses to enforce a premarital agreement.
- **Incomplete or dishonest financial disclosure.** Leaving out an account, understating a business's value, or omitting debt can unravel the entire agreement later, when neither spouse can afford the surprise.
- **One lawyer “representing” both spouses.** A single attorney cannot represent both parties to a prenup. Each spouse needs their own independent counsel.
- **Treating it as “set and forget.”** A prenup signed in your 30s may not reflect a business you started in your 40s, or an inheritance you received in your 50s. A postnuptial agreement can update the terms after the wedding, but only if both spouses agree — far easier while the marriage is going well than after it is in trouble.

PART 10

A Realistic Timeline

Because the law requires at least seven calendar days between presenting the final agreement and signing it — and because financial disclosure, negotiation, and each spouse's independent counsel review all have to happen before that clock even starts — a prenup is not something to start the month of the wedding.

- **60–90 days before the wedding:** initial consultation, each spouse retains independent counsel, financial disclosure gathering begins.
- **30–45 days before:** drafting and negotiation of terms.
- **At least 7 calendar days before signing:** final agreement is presented to both parties — the waiting period clock starts here.
- **Before the wedding:** agreement is signed by both parties (it only becomes effective once you actually marry).

PART 11

Frequently Asked Questions

Does a prenup mean we don't trust each other?

Most couples who go through this process describe the opposite experience — it forces an honest conversation about money and expectations that many couples never have otherwise, and having it before the wedding, calmly, tends to prevent much worse conversations later.

Can we write our own prenup without lawyers to save money?

You can, but a self-drafted agreement is exactly the kind of agreement most likely to be thrown out later — missing the disclosure requirements, the waiting period, or independent counsel are the most common reasons prenups fail in court. The cost of two attorneys is small compared to the cost of litigating whether an agreement is even valid during a divorce.

What if my fiancé(e) refuses to sign a prenup?

That is important information to have before the wedding, not after. It is also worth exploring why — sometimes it is a values disagreement, and sometimes it is simply that they have not been given enough time or their own attorney to feel comfortable, which the law requires you to fix anyway.

We are already married — is it too late?

No. California allows married couples to enter into a postnuptial agreement that accomplishes many of the same goals, including changing how property will be characterized going forward.

? Does a prenup expire?

Not on its own, but it should be reviewed after major life events — a new business, an inheritance, a health diagnosis, children, or simply the passage of many years — to make sure it still reflects what both of you actually want.

PART 12

What About After the Wedding? Postmarital Agreements

A prenup can only address what the two of you can foresee before you marry. California law has an answer for what comes later: a postmarital (or “postnuptial”) agreement, signed at any point during the marriage, that lets spouses agree in writing on how a specific new asset, or their finances generally, will be characterized and divided — common triggers include a new job or company, an inheritance or gift, buying a home together, or simply never having gotten a prenup in the first place.

Postmarital Agreements Face Tougher Scrutiny Than Prenups

A premarital agreement is signed by two people who are still legally strangers to each other, negotiating at arm's length. A postmarital agreement is signed by two people who are already married — and once you marry in California, each spouse owes the other a fiduciary duty (Family Code § 721(b)): “the highest good faith and fair dealing,” the same standard the law applies between business partners. That duty changes everything about how courts review a postnup.

- **A presumption of undue influence can apply.** If a postmarital agreement (or any transaction between spouses) gives one spouse an unfair advantage over the other, California case law holds that a rebuttable presumption arises that the transaction was the product of undue influence (*Marriage of Haines* (1995); *Marriage of Burkle* (2006)). The advantaged spouse then has the burden of proving the other spouse acted freely and voluntarily, with full knowledge of the facts and a complete understanding of what the agreement actually did (*Marriage of Delaney* (2003)).

- **The presumption isn't automatic — it has a trigger.** More recent case law clarified that this presumption doesn't spring up just because one spouse later feels the deal was bad. The spouse challenging the agreement has to first show that it actually gave the other spouse an unfair advantage. When both had their own attorney, received full access to relevant financial records, and the agreement itself says neither spouse is being unfairly advantaged, courts have upheld postnups even without applying the presumption at all — *Marriage of Burkle* is the leading example: the court enforced the agreement specifically because it was negotiated by sophisticated, independently represented parties with full disclosure.
- **Disclosure is held to a higher bar than a prenup's.** A premarital agreement only requires "fair and reasonable" disclosure. Because spouses already owe each other a full fiduciary duty once married, a postmarital agreement is generally expected to meet a full and complete disclosure standard — access to the actual books and records, not just a summary.
- **This can make them harder to get signed — in a specific way.** To make a postnup durable, both spouses really should have independent counsel, full mutual financial disclosure, and ideally an explicit acknowledgment that neither spouse is getting an unfair advantage — all of which takes real time and cost.

Changing Who Owns What Is a "Transmutation"

Many postmarital agreements do more than plan for the future — they actually change the character of a specific existing asset. California calls this a "transmutation," with its own strict formality requirement under Family Code § 852:

- **It must be a written, express declaration.** The document must state that the characterization or ownership of the specific property is being changed. Courts have held that simply adding a spouse's name to a title or deed is not enough by itself (*Estate of MacDonald* (1990); *Marriage of Lafkas* (2015)).

- **No outside evidence can fill the gap.** Courts will not look at emails, conversations, or other circumstantial evidence to infer that a transmutation was intended — the writing itself has to say so clearly.
- **A transmutation that favors one spouse still triggers the undue-influence presumption above.** The advantaged spouse still has to be ready to show the other spouse entered into it freely, voluntarily, and with full understanding.

The bottom line: postmarital agreements are a real and useful tool for exactly the situations you can't plan for in a prenup — a new job, a windfall, a new house, an inheritance — but because the law expects more of spouses who are already married, they have to be built more carefully than a prenup, not less.

PART 13

How Mock Law Can Help

I help Bay Area couples from all walks of life put together premarital agreements that are built to hold up. Mock Law, APC offers **flat-fee premarital and postmarital agreement services**, including consultations and drafting, so you know the cost upfront. That means starting early enough to satisfy the seven-day rule without a last-minute scramble, making sure financial disclosure is done right the first time, and coordinating with your estate planning attorney when a gray prenup is really doing double duty as part of your broader legacy plan.

If you are getting married and want to talk through whether a prenup makes sense for your situation — or you already have one and it has not been looked at in years — the first consultation is free, and it is a real conversation rather than a pitch.

Ready to Protect What's Yours?

Schedule a confidential consultation with Mock Law, APC.

Flat-fee premarital & postmarital agreements — consultations and drafting.

Schedule a Consultation

hello@mmocklaw.com | www.mmocklaw.com
415.523.7969