

LEOPOLDUS
LAW

THE

ATHLETE

PRENUP PLAN

Protecting what you built, planning like a professional, and doing it so it holds

BRANDON LEOPOLDUS, ESQ.

A PRENUP IS NOT A BET AGAINST YOUR MARRIAGE. IT IS A BUSINESS PLAN.

It is a business plan for the business that is your career, which happens to sit inside your marriage. For an athlete, that business is unusual: it earns enormous money in a compressed window, it is volatile, and most of it lands during the years you are most likely to be married. That combination is exactly what turns a divorce into a financial event on the scale of the career itself.

Here is the part nobody tells the twenty-three-year-old signing his first big deal. In California, what you earn during the marriage is not just yours. By default, it is half your spouse's. A prenup is how you decide the rules on the front end, together, instead of letting a court and a default statute decide them later, at the worst possible moment.

Two things are true at once. A prenup done right is one of the smartest protective moves an earning athlete makes. And a prenup done wrong, rushed, one-sided, sprung the week of the wedding, is worth less than the paper it is on, because the whole game is whether it holds up when it matters. This guide is about doing it so it holds.

THE WHOLE GUIDE, IN ONE LINE

**EARLY AND CLEAN BEATS LATE
AND RUSHED.**

THE DEFAULT RULE THAT SHOULD GET YOUR ATTENTION

CALIFORNIA IS A COMMUNITY PROPERTY STATE

With narrow exceptions, everything you earn and acquire during the marriage is community property, owned equally by both spouses. Your salary during those years. Your endorsement and NIL income during those years. Most of what you buy with that money. All of it, presumptively split down the middle if the marriage ends.

And the character sticks. The nature of an asset is fixed at the moment you acquire it, and property that is community when earned stays community for the whole marriage unless the two of you affirmatively agree to change it. There is no quiet drift back to "mine" over time. What comes in as community stays community, absent an agreement.

Now put the athlete's earning curve on top of that rule. A normal earner builds wealth slowly across forty working years, often mostly before or after a marriage. An athlete can earn the majority of a lifetime's income in a five-to-ten-year window that falls squarely inside the marriage. The default rule was not written with that curve in mind, and it does not care.



DID YOU KNOW?

Without a prenup, a short marriage that overlaps your peak years can transfer half of your peak-years fortune. That is the stake. It is not paranoia. It is arithmetic.

WHAT IS ALREADY YOURS, AND HOW YOU LOSE IT

SEPARATE PROPERTY IS REAL, BUT ONLY IF YOU KEEP IT THAT WAY

Not everything is on the table. Separate property, what you owned before the marriage, and anything you receive during the marriage by gift or inheritance, stays yours, along with the rents and profits it generates. For an athlete that can include a pre-marriage signing bonus, the entity and the name-and-likeness brand you built before you married, an inheritance, and a home you owned going in.

/ HOW IT SLIPS AWAY: COMMINGLING

The moment you run separate money through a joint account, or pay for shared assets out of it for years, the line blurs, and once it blurs the law presumes the whole thing is community and puts the burden on you to trace it back. Many athletes cannot, because nobody kept the records.

Separate property is not protected by what it was. It is protected by keeping it genuinely separate, in its own account, with its own paper trail. A prenup makes that job far easier by defining what is separate up front, but the discipline of not commingling is still on you.

THE RULE

Its own account. Its own paper trail. Never touching the joint account. That is the entire discipline, and it is simple to describe and easy to fail without a system.

WHAT A PRENUP ACTUALLY DOES

REWRITING THE DEFAULT RULES FOR YOUR OWN SITUATION, IN WRITING, BEFORE THE WEDDING

- **CHARACTERIZES FUTURE EARNINGS.** You can agree that some or all of what you earn during the marriage, your salary, your NIL, your endorsement income, will be your separate property rather than community. This is the single biggest lever for an athlete.
 - **PROTECTS THE BUSINESS YOU BUILT.** Your loan-out company, your LLC, and the intellectual property in your name and brand can be walled off as separate, along with their future growth.
 - **HANDLES THE HOUSE AND THE ASSETS.** You can decide in advance how a home, an investment account, or a family business is treated, instead of litigating it later.
 - **ADDRESSES SPOUSAL SUPPORT.** You can set, limit, or waive it, within the rules covered in Section IV.
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THE ONE LINE IT CANNOT CROSS

A prenup cannot bargain away your children's rights. Child support belongs to the child, not to you, and no agreement can adversely affect it. Everything else is largely yours to design, if you design it correctly.

SPOUSAL SUPPORT: YES, YOU CAN ADDRESS IT

THE GUARDRAILS ARE SPECIFIC, AND THEY ARE STRICT

California once refused to enforce premarital waivers of spousal support. That changed. A waiver entered into voluntarily by parties who understand its effect no longer offends public policy and can be enforced. So spousal support is a legitimate subject for your agreement, not an off-limits one.

But the guardrails here are specific, and they are strict. A spousal support provision will not be enforced against a spouse who was not represented by independent counsel when the agreement was signed, and even a properly signed waiver can be struck down if enforcing it would be unconscionable at the time of the divorce.

1 IF YOU WANT A SPOUSAL SUPPORT TERM THAT SURVIVES, YOUR SPOUSE NEEDS **THEIR OWN LAWYER. FULL STOP.**

A waiver signed by an unrepresented fiancé is a waiver a court will not honor.

THE ENFORCEABILITY PLAYBOOK

This is the section that matters most, because a prenup that does not hold is worse than none at all. It gives you false confidence and then fails you in the one moment you needed it.

THE FACTS

A young ballplayer and his fiancée signed a premarital agreement the day before flying to their wedding, and she had no lawyer of her own. Years later she challenged it.

THE OUTCOME

The agreement survived, but only after a trip to the California Supreme Court, which held that the lack of her own counsel was just one factor among several in judging whether she signed voluntarily.

YOUR CHECKLIST

The factors the court weighed are your checklist for doing this right: how close to the wedding it was signed, whether it was sprung as a surprise, whether each side had independent counsel, the balance of bargaining power, whether assets were fully disclosed, and whether both people actually understood what they were giving up.

The Legislature then turned much of that into hard rules. To be treated as voluntarily signed, an agreement generally requires that each party either have independent counsel or knowingly waive it in a separate writing, and that at least seven calendar days pass between the day the agreement is first presented and the day it is signed. Read that twice. Seven days, minimum. The eve-of-wedding signing is not a bad look. It is a defect that can void the agreement.

START EARLY. A LAWYER ON EACH SIDE. DISCLOSE EVERYTHING. GIVE REAL TIME TO REVIEW.

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**DO IT EARLY, DO IT
FAIRLY, AND DO IT
SO IT HOLDS. THEN
GO GET MARRIED.**

BRANDON LEOPOLDUS, ESQ.

Founder, Leopoldus Law, APC

THE MOVES THAT ARE SPECIFIC TO ATHLETES

A GENERIC PRENUP MISSES WHAT MAKES YOUR FINANCES DIFFERENT. BUILD FOR THEM.

WALL OFF THE ENTITY AND BRAND

The loan-out company, the LLC, and your name-and-likeness rights built before the marriage should be defined as separate property, together with their appreciation, so the machine that runs your off-field income stays intact.

KEEP THE PRE-MARRIAGE MONEY CLEAN

A signing bonus or savings you brought into the marriage stays separate only if you keep it separate. Give it its own account and never let it touch the joint one.

PLAN FOR THE VOLATILITY

Athlete income spikes and vanishes. Disclosure should reflect not just what you have, but the realistic shape of what is coming, so the agreement is built on an honest picture.

COORDINATE WITH THE REST OF THE PLAN

The prenup, the entity, and the estate plan should agree with one another. A trust that says one thing and a prenup that says another is a fight waiting to happen.

THE MACHINE THAT RUNS YOUR OFF-FIELD LIFE STAYS INTACT.

ALREADY MARRIED? THE POSTNUP

LATER IS HARDER THAN EARLIER. IT IS NOT IMPOSSIBLE.

If the wedding already happened, you are not out of options. Spouses can change the character of their property during the marriage by a written agreement, called a transmutation, and a postnuptial agreement can do much of what a prenup does.

/ THE CATCH: A FIDUCIARY DUTY

The rules are harder once you are married. Before the wedding you are two people negotiating at arm's length. After it, you owe each other a fiduciary duty, the highest duty the law recognizes, which means a postnup gets scrutinized for fairness far more closely than a prenup does. It is still very much worth doing when it is the right tool. It just has to be done with even more care, full disclosure, and independent counsel on both sides.

THE TAKEAWAY

Later is harder than earlier. It is not impossible. Full disclosure and independent counsel on both sides carry even more weight than they do in a prenup.

WHAT TO DO NEXT

IF YOU ARE EARNING AND GETTING MARRIED, HERE IS THE ORDER

The theme is the same one that runs through all of it: early and clean beats late and rushed.

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- Start months before the wedding, not days. Time is a feature, not a formality.

 - Get a lawyer on each side. Your fiancé's independent counsel is what makes the agreement stick.

 - Disclose everything in writing: what you own, what you owe, and the honest shape of your future income.

 - Decide the big levers: how future earnings are characterized, and how the entity and brand are protected.

 - Handle spousal support deliberately, knowing it only holds if your spouse was represented.

 - Keep separate property separate after the wedding. Its own account, its own records, no commingling.

 - If you are already married, ask whether a postnup is the right tool, and do it with the same care.
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**THIS IS WHAT PROFESSIONALS DO
WITH A BUSINESS WORTH
PROTECTING. DO IT EARLY. DO IT
FAIRLY.**



— ABOUT THE AUTHOR

BRANDON LEOPOLDUS, ESQ.

Founder, Leopoldus Law, APC

Brandon Leopoldus umpired in professional baseball before he ever practiced law. Five leagues. Seven playoff series. Two All-Star games. One championship series. One infamous appearance on SportsCenter. That path, through the minor leagues and an Olympic family, is the lens he brings to every matter at Leopoldus Law, APC.

100+

ATHLETES ADVISED

25+

SPORTS

3

LEAGUES LAUNCHED

6

PRO TEAMS

4

GOVERNING BODIES

Leopoldus Law is a sports and entertainment boutique in Culver City, California. Brandon builds premarital and postmarital agreements for athletes and coordinates them with the entities, intellectual property, and estate plans that protect an athlete's wealth.

He sits on the board of the Sports Lawyers Association and teaches Sports Law at Loyola Law School. The firm works with athletes and the people who advise them. Sports clients only. No exceptions.

A NOTE ON HOW TO USE THIS GUIDE

This guide is educational. It explains how athletes commonly use premarital and postmarital agreements under California law, and it is written to make you a sharper client, not to replace one. It is not legal advice for your situation, and reading it does not make Leopoldus Law your lawyer.

Marital property rules vary by state and change over time, and enforceability depends on facts and process this guide cannot supply. Build your agreement, with independent counsel on both sides, well before the wedding. If you would like that counsel to be us, reach out.

REACH OUT

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ENDNOTES

- 1 Cal. Fam. Code § 760 (except as otherwise provided by statute, all property acquired by a married person during the marriage is community property).
 - 2 *See v. See*, 64 Cal. 2d 778, 783-84 (1966) (the character of property is fixed at the time of acquisition; property that is community when acquired remains community throughout the marriage unless the spouses agree to change it; a spouse who commingles separate and community funds bears the burden of tracing the separate share).
 - 3 Cal. Fam. Code § 770 (separate property: property owned before marriage, and property acquired during marriage by gift, bequest, devise, or descent, with the rents, issues, and profits thereof); id. § 771 (earnings and accumulations while living separate and apart are separate property).
 - 4 Cal. Fam. Code §§ 1600-1617 (Uniform Premarital Agreement Act); id. § 1611 (a premarital agreement must be in writing and signed by both parties); id. § 1612 (permissible content; the right of a child to support may not be adversely affected).
 - 5 *In re Marriage of Pendleton & Fireman*, 24 Cal. 4th 39, 53-54 (2000) (a premarital waiver of spousal support entered into voluntarily by parties aware of its effect does not offend public policy); Cal. Fam. Code § 1612(c) (a spousal support provision is not enforceable unless the party against whom enforcement is sought was represented by independent counsel when the agreement was signed, and is unenforceable if unconscionable at the time of enforcement).
 - 6 *In re Marriage of Bonds*, 24 Cal. 4th 1, 26-27, 35-36 (2000) (voluntariness of a premarital agreement is judged on multiple factors, including proximity of signing to the wedding, surprise in presentation, the presence or absence of independent counsel, inequality of bargaining power, disclosure, and the parties' understanding; the party challenging the agreement bears the burden).
 - 7 Cal. Fam. Code § 1615 (a premarital agreement is unenforceable if not executed voluntarily, or if unconscionable when executed and made without adequate disclosure; subdivision (c) deems an agreement involuntary unless the court finds, among other things, representation by independent counsel or a written waiver of counsel, and at least seven calendar days between the time the agreement was first presented and the time it was signed). Confirm current requirements.
 - 8 Cal. Fam. Code §§ 850-852 (a transmutation changing the character of marital property is not valid unless made in writing by an express declaration).
 - 9 Cal. Fam. Code § 721 (spouses occupy a confidential and fiduciary relationship with each other, a duty that applies during marriage but not, under *Bonds*, to parties negotiating a premarital agreement).
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