Does a New Jersey Prenuptial Agreement Need To Be Updated After Having Children?



New Jersey Family Law Attorneys Explain When to Revisit a Prenup

A couple signs a prenuptial agreement years before starting a family. Life moves forward. The couple has a child. Many parents then wonder whether that original agreement still applies. Some assume the entire marital agreement became meaningless the moment their family grew. Others worry the opposite is true and that outdated terms are now locked in place with no way to fix them. So which is true?

New Jersey's Uniform Premarital and Pre-Civil Union Agreement Act governs how premarital agreements are created and enforced. Having a child does not automatically void an existing prenup. Certain terms, however, remain entirely outside a prenup's control. This holds true regardless of when the agreement was signed or how the family later grows.

Our New Jersey marital agreement attorneys at Williams Law Group, LLC help parents understand what their prenup still controls. As a result, we know how to identify outdated terms. We also help parents address gaps the original agreement never anticipated, and we formally update a prenup when circumstances call for it.

Does Having a Child Automatically Invalidate a New Jersey Prenup?

No. A validly executed premarital agreement generally remains enforceable after a couple has children. New Jersey law does not treat parenthood as an automatic trigger that cancels the contract. The agreement's core financial terms generally remain in effect after the child is born.

This surprises many parents. They assume a major life event like a child's birth wipes the agreement away entirely. That assumption is incorrect for most of the prenup's provisions. Property division terms and alimony provisions generally remain intact and enforceable after the child is born. The same is true for separate property designations. Separate property means assets one spouse owned before the marriage or received individually, such as through inheritance.

Some provisions, though, were never enforceable in the first place, even on the day the agreement was signed. Those exceptions exist regardless of whether a couple ever has children. They involve the very issues parents often assume a prenup already addresses, which can lead to confusion later.

What Can a New Jersey Prenup Legally Decide About Children?

A prenup can include financial planning provisions related to future children, but it cannot restrict a child's right to support or bind a court on issues that ultimately fall within child support. N.J.S.A. 37:2-34 permits couples to address property rights and other matters that do not violate public policy, while N.J.S.A. 37:2-35 specifically protects a child's right to support.

For example, couples may use a prenup to address plans for education savings accounts, trusts, life insurance, or property they intend to preserve for future children. Agreements may also express the couple's intentions regarding certain future expenses. However, provisions involving expenses that could become part of a child-support determination cannot override the child's rights or the court's authority.

The following types of provisions generally fall within that permitted scope:

- **Education Account Funding** – An agreement can specify how a couple will contribute to a dedicated account set aside for a child's future schooling.
- **Private School or Tuition Planning** – Couples can express their intentions regarding future education expenses, subject to the child's support rights and the court's authority.
- **Other Child-Related Expenses** – A prenup can address the couple's plans for expenses such as childcare or extracurricular activities, but those provisions cannot override a later child-support determination.

- **Family Business or Asset Earmarking** – Couples can specify how a family business or other asset will be preserved or passed down for a child's benefit.
- **Trust Contribution Commitments** – An agreement can require a set contribution toward a trust established for a child, separate from any court-ordered support.

These provisions can help document the parents' financial plans and intentions, but they cannot override the child's independent support rights or the court's authority. That distinction explains why certain child-related planning survives in a prenup. Other child-related terms never will, no matter how the agreement is worded.

Why Is a Prenup Unable To Decide Child Custody or Support in New Jersey?

New Jersey law prohibits any premarital agreement from adversely affecting a child's right to support. N.J.S.A. 37:2-35 states this directly. Courts enforce that limitation strictly, regardless of what the parents agreed to years earlier, before the child was ever born. This protection cannot be waived by either parent.

Parents also cannot use a prenup to conclusively determine future custody arrangements. Courts resolve custody based on the child's best interests and determine support under the law applicable when the issue arises.

This rule protects children from agreements negotiated before their needs, personalities, or circumstances were even known. A judge deciding custody or support will look at the family's situation as it exists now. The judge will not simply defer to whatever the parents guessed years earlier.

How Does New Jersey Law Treat a Prenup's Fairness After Life Changes Like Children?

New Jersey changed its law governing the enforceability of premarital agreements in 2013. For agreements entered into on or after June 27, 2013, N.J.S.A. 37:2-38 no longer allows a court to find an agreement unconscionable simply based on circumstances existing when enforcement is sought. Instead, the statute focuses on whether the agreement was unconscionable when it was executed under the circumstances specified by the law.

That distinction can matter when a couple later has children or experiences other major life changes. For a modern prenup, changed family circumstances alone do not necessarily make the agreement unenforceable. Couples who believe their agreement no longer reflects their needs can instead consider formally amending it.

What Terms Might Need Updating After Having Children?

Having a child does not necessarily mean a prenup needs a complete rewrite. Several specific provisions, though, often benefit from a fresh look once the family has grown. Parents sometimes assume the whole document must be redone, when only a handful of clauses may warrant attention. These are the areas parents should review most closely:

- **Life Insurance Requirements** – Many prenups require a spouse to maintain life insurance, and the appropriate coverage amount often changes once a child depends on that income.
- **Estate Planning Cross-References** – A prenup and a will should work together, particularly regarding guardian nominations and how children are provided for at death.
- **Trust Funding Provisions** – Agreements that mention future trusts for children should specify funding amounts and timing clearly, rather than leaving those details vague.
- **Business or Asset Growth Clauses** – A family business or asset that has grown since the wedding may need updated language reflecting its current value and the family's stake in it.
- **Updated Financial Information** – If the spouses are considering significant financial changes to the agreement, current information about assets, income and obligations can help them evaluate and document those changes.

None of these updates touch custody or support, since those issues remain entirely within the court's authority. They do, however, help ensure the agreement still reflects the family's actual financial picture today. The financial picture that existed at the wedding may change considerably over time.

How Do You Formally Amend an Existing Prenup in New Jersey?

N.J.S.A. 37:2-37 permits couples to amend or revoke a premarital agreement after marriage. The amendment must be made in writing. It must also be signed by both spouses. This formality mirrors the same requirement that applied to the original agreement itself, back when the couple first became engaged.

Although the statute requires the amendment to be written and signed by both spouses, careful financial disclosure and independent legal advice can provide additional safeguards against later disputes over the amendment's enforceability.

A verbal understanding between spouses does not satisfy the statute's requirements for amending the prenup. Putting agreed changes into a properly drafted and signed

written amendment satisfies the statutory writing requirement and provides a clear record of what the spouses agreed to change.

What Steps Should You Take If You Want To Update Your Prenup After Having a Child?

Parents who want to revisit their prenup should approach the process with the same care as the original agreement. Rushing through an update can create the same problems the couple hoped to avoid. The following steps help ensure any update holds up if it is ever challenged:

- **Review the Original Agreement Together** – Identify which provisions still make sense and which ones no longer reflect the family's situation.
- **Gather Updated Financial Information** – Prepare a current statement of both spouses' assets, income, and debts before drafting any changes.
- **Retain Independent Legal Counsel** – Each spouse should have their own attorney review the proposed amendment before signing.
- **Draft the Amendment In Writing** – Verbal agreements between spouses carry little legal weight if a dispute arises later.
- **Coordinate With Your Estate Plan** – Update wills, trusts, and beneficiary designations alongside the prenup so all your documents work together.

Taking these steps will not guarantee every provision survives a future challenge.

How Can a New Jersey Family Law Attorney Amend a Prenup Agreement?

Parents often assume their prenup either still works perfectly or needs to be thrown out entirely. Neither assumption is usually correct. Sorting out which provisions remain useful takes a careful review by someone familiar with how these agreements actually function once a family grows and circumstances shift.

Our New Jersey marital agreement attorneys at Williams Law Group, LLC routinely review existing prenups against a family's current circumstances. We identify exactly what still works and what does not. We help parents draft clear amendments that protect their children's future without overstepping what New Jersey law allows a prenup to control.

If you have children and have not looked at your prenup since your wedding day, do not assume it still says what you think it does. Contact us so we can review your agreement together and help you decide whether an update makes sense for your family's current needs.