

# Prenuptial Agreements

*But will you still love me tomorrow?*



**Mark Accettura**

**Attorney**



Without a prenup, Paul and Linda McCartney's split makes sizzling headlines.

LOOKING BACK, I'M SURE PAUL WISHES HE HAD FOUGHT THROUGH HIS FEELINGS AND DEMANDED A PRENUP. WITH A PRENUPTIAL AGREEMENT, HEATHER'S ENTITLEMENT WOULD SIMPLY BE — AS WE SAY IN THE LAWYER BUSINESS — “A MATTER OF CONTRACT.”

What was Paul McCartney thinking? I have to believe that Sir Paul's friends and professional advisors — of which I am sure there are many — begged him to get a prenuptial before marrying Heather Mills; a woman whose only claim to fame is that she mar-

ried a Beatle. Now, the rock icon is in the fight of his life trying to preserve the multi-million dollar estate he accumulated over his more than forty-year music career. Heather is reportedly seeking one-quarter of Paul's assets after four short years of marriage. Paul probably thought that — like his marriage to his late wife, Linda — his current marriage would last until death-do-us-part.

I haven't heard Paul's explanation as to why he didn't do a prenuptial agreement, but if he's like the rest of the mere mortal population, he was naïve, or afraid to offend his betrothed by raising such an awkward and sensitive subject.

Looking back, I'm sure Paul wishes he had fought through his feelings and demanded a prenup. With a prenuptial agreement, Heather's entitlement would be — as we say in the lawyer business — “a matter of contract.” Paul could simply settle up with Heather without fanfare. He could have saved himself the public embarrassment and second-guessing he's currently receiving in the media. And if his agreement contained a confidentiality clause — as most do — he could have completely shielded himself from public scrutiny.

A prenuptial agreement is a contract between consenting adults. You agree in advance of marriage as to what will happen in the event of divorce or death. Although you can't agree on matters involving children, you can pretty much agree on everything else. For example, it was reported by the British tabloids that Jennifer Lopez insisted that Ben Affleck sign a prenuptial agreement guaranteeing her \$5 million if Affleck cheated on her (plus a \$1 million

penalty if he lied about it). J.Lo also allegedly required that Affleck have sex with her no less than four times a week.

Jen's demands may have scared Ben off; a possible explanation for why the marriage never happened. From my experience, about ten percent of couples who set out to do a prenuptial never marry. My view is that a couple that can't survive the prenuptial process shouldn't marry anyway.

Prenuptial agreements don't follow the golden rule: the person with the gold makes the rule. I have personally seen captains of industry crumble to the demands of impecunious, but determined, fiancés with good lawyers. Prenuptial agreements are negotiated; they can be as stingy or generous as the parties determine. The courts do, however, impose the requirement that they be fair when entered into. I once counseled a client that although he had a written prenuptial agreement, no court would enforce the provision that would have sent his Eastern European wife packing with only \$5,000. No judge would enforce an agreement that would result in