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2023 Decision Offers Key Insights For Massachusetts Prenuptial Agreements

By James M. Lynch | May 19, 2023

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2023 Decision Offers Key Insights For Massachusetts Prenuptial Agreements

A recent decision by the Appeals Court highlights the challenges of preparing and enforcing prenuptial agreements in Massachusetts.



A recent opinion by the Massachusetts Appeals Court, [Rudnick v. Rudnick \(2023\)](#), provides important insights into the sometimes murky realm of the law surrounding [prenuptial agreements](#) in Massachusetts, with potentially far-reaching implications have for couples who have entered or are considering entering a preup. This article aims to provide an in-depth analysis of the case, its

key findings, implications, and recommendations for drafting and enforcing prenuptial agreements in Massachusetts.

In the following sections, we discuss the background of Massachusetts prenuptial agreements, provide an overview of the [Rudnick v. Rudnick](#) case, delve into the key findings in the [Rudnick v. Rudnick](#) decision, and explore the implications of the decision for Massachusetts prenuptial agreements. We will also discuss [prenuptial drafting considerations](#) in light of the Rudnick decision, the [enforceability of Massachusetts prenuptial agreements post-Rudnick](#), [legal precedents impacted by the decision](#), and recommendations for [couples considering prenuptial agreements](#) in Massachusetts.

Background of Massachusetts Prenuptial Agreements

Prenuptial agreements, sometimes called antenuptial agreements – and most commonly known as “prenups” – are legal contracts entered into by couples before they get married. These agreements typically outline the [division of assets](#), [debts](#), [alimony](#), and other financial matters (other than child support) in the event of a divorce. In Massachusetts, prenuptial agreements are governed primarily by case law (the state’s [prenuptial agreement statute](#) is fairly brief.)

Massachusetts prenuptial agreements have been the subject of much legal debate and scrutiny over the years. The state has a long history of upholding the validity of these agreements, provided that certain conditions are met. For instance, both parties must enter into the agreement voluntarily, with full disclosure of their financial situation, and the agreement must be fair and reasonable at the time it is executed, as well as at the time of the divorce. For example, in my [2016 blog about the enforceability of preputial agreements in Massachusetts](#), I wrote:

As noted above, Massachusetts law enforces prenuptial agreements if they are valid when executed and are conscionable at the time of divorce. However, sometimes the court takes a “second look” at an agreement during a divorce proceeding to make sure that it “has the same vitality at the time of the divorce that the parties intended at the time of execution.” The agreement would not be enforced if one party would be left, “without sufficient property, maintenance, or appropriate employment to support [oneself],” due to circumstances that occurred while the parties were married. Here, the wife was left with a house underwater, with severe code violations, and in serious need of repairs

and renovations. If their prenuptial agreement were to be enforced, the wife would be left without a decent place to live and without adequate means of supporting herself.

Despite the state's general support for prenuptial agreements, there have been several cases in which the courts have invalidated such agreements, citing various grounds such as unconscionability, lack of full disclosure, or coercion. This has resulted in an evolving legal landscape surrounding prenuptial agreements in Massachusetts, with each new decision providing further guidance and clarity.

Overview of the Rudnick v. Rudnick Case

In Rudnick v. Rudnick, the parties entered into a prenuptial agreement before their 27-year marriage in 1992. The agreement provided, among other things, that in the event of a divorce: 1) Wife would not be entitled to alimony; 2) homes, residences or real estate acquired during the marriage as tenants in common; and 3) *If*, there were no jointly owned marital home at the time of the divorce, the wife would receive “relocation and ‘support’” from her husband.

According to the Appeals Court, during the marriage the husband acquired a home in Florida with his wife’s participation but in his own name only. The Court indicated that the husband also purchased a marital home in Canton, MA during the marriage. taking title in the form of a trust for the benefit of his children. The Court also noted that the prenuptial agreement was presented to the wife just a few days before the marriage date. The wife contested the validity of the prenuptial agreement, arguing that it was unconscionable and that she was coerced into signing it.

For the reasons discussed below, the trial court found the pre-nup to be unenforceable, finding that it failed to meet the second of the two necessary requirements for enforceability under Massachusetts law – i.e. that the agreement must be fair and reasonable at the time of the divorce. After an appeal, the Massachusetts Appeals Court affirmed the trial court's decision.

Key Findings in the Rudnick v. Rudnick 2023 Decision

In its decision, the Appeals Court highlighted several findings that ultimately led to the invalidation of the prenuptial agreement. First, the agreement failed to satisfy the second of the two enforceability requirements: (1) it must be fair and reasonable at the time execution (the “first look”) and (2) it must be conscionable at the time of enforcement (the “second look”). The trial judge found that the agreement satisfied the first requirement – despite the fact that the agreement was executed the day before the wedding as a precondition to husband’s agreement to marry – and despite the Court’s finding that the husband failed to make full financial disclosure at the time of execution. (The Court noted that the wife was represented by counsel who advised her not to sign the agreement.) Regardless, because the wife did not challenge the validity of the agreement at the time of the execution (i.e. the “first look”) on appeal, however, the Appeals Court only focused on the trial judge’s finding that the agreement failed to survive the “second look”.

Massachusetts law requires a “second look” at prenuptial agreements to ensure that the agreement has the same vitality at the time of the divorce that the parties intended at the time of its execution and the courts will not enforce a prenuptial agreement that prevents a spouse from retaining her marital rights. The Court found that the husband’s failure to take title the marital home and Florida property as a tenant in common with his wife was inconsistent with the terms of the agreement, which contemplated the parties sharing ownership of real estate. The Appeals Court emphasized that the wife, now 86 and ailing, waived her right to alimony based upon the understanding that she would be entitled to the benefit of her half-interest in the real property acquired during the marriage – here the Florida and Canton homes.

Without either a share of the real estate or alimony, the Court noted that the wife would be left with few financial resources post-divorce. Both courts found that enforcement of the agreement in such circumstances would be “unconscionable”.

Implications of the Rudnick Decision for Massachusetts Prenuptial Agreements

In Rudnick, had the two parcels of real estate been placed in both parties’ names, rather than husband’s name alone, it is likely that the agreement would have survived the “second look” taken by the Court

at the time of the divorce. The appellate courts have repeatedly stressed that prenuptial agreements that result in outcomes that are merely one-sided are still enforceable, particularly when both parties are represented by counsel at the time the agreement was signed. The courts have also upheld prenuptial agreements executed, as in Rudnick, mere days before the marriage in “take it or leave it” circumstances, despite other case law suggesting that the presentation of a prenup just before a marriage date could be grounds for challenging its enforcement in some circumstances.

The Rudnick decision does have other significant implications for Massachusetts prenuptial agreements, however, as it highlights the importance of full financial disclosure, voluntariness, and fairness in these agreements – both at the time of execution and at the time of divorce. Perhaps the key take away from the case is that the party seeking enforcement of the prenuptial agreement must comply with their obligations under the agreement during the marriage. Thus, if a prenuptial agreement provides that the spouses will co-own property that is acquired during the marriage, it is important that the party seeking enforcement of the agreement concede the other spouse’s interest in real estate that was actually acquired during the marriage.

Furthermore, the decision underscores the need for both parties to have independent legal counsel when entering into a prenuptial agreement. This can help ensure that each party’s rights and interests are adequately protected, and that the agreement is drafted in a manner that meets the requirements for enforceability under Massachusetts law.

Drafting Considerations in Light of the Rudnick Decision

In light of the Rudnick decision, couples and their attorneys should carefully consider the following factors when drafting prenuptial agreements in Massachusetts:

1. Full and fair financial disclosure: To ensure the enforceability of a prenuptial agreement, both parties must provide a complete and accurate disclosure of their financial situation. This includes information about assets, debts, income, and any other relevant financial matters.

2. Voluntariness: Both parties must enter into the prenuptial agreement voluntarily, without undue pressure or coercion. To avoid any claims of coercion, it is advisable to present and discuss the agreement well in advance of the wedding date, allowing each party sufficient time to review and consider the terms.
3. Careful consideration of specific terms. Both parties must carefully consider specific terms they include in the prenup, such as a provision that each partner shall be entitled to an equal share of any real estate acquired during the marriage. A failure to comply with such terms could result in the agreement being declared unenforceable. Accordingly, parties must carefully consider any obligations that are created by the agreement's specific terms before including them in the agreement.
4. Fairness and reasonableness: The terms of the prenuptial agreement must be fair and reasonable at the time of execution. In practical terms, this may mean that a prenup that leaves one spouse destitute, and the other spouse wealthy, following a long-term marriage may be unenforceable. Absolute waivers of alimony and provisions that effectively lock one party out of all or virtually all of the marital assets can jeopardize the prenup's effectiveness.
5. Independent legal counsel: Each party should have their own attorney when negotiating and drafting a prenuptial agreement. This ensures that both parties' interests are adequately represented and can help prevent claims of coercion or unfairness.



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Recommendations for Couples Considering Prenuptial Agreements in Massachusetts

Based on the Rudnick decision and the legal landscape surrounding prenuptial agreements in Massachusetts, couples considering entering

into a prenup should take the following recommendations into consideration:

1. Start the process early: Couples should start the process of negotiating and drafting a prenuptial agreement as early as possible, ideally several months before the wedding date. This allows ample time for both parties to review and consider the terms, and can help prevent any claims of coercion or undue pressure.
2. Obtain independent legal counsel: Each party should have their own attorney when negotiating and drafting a prenuptial agreement. This ensures that both parties' interests are adequately represented and can help prevent any claims of coercion or unfairness.
3. Provide full financial disclosure: Both parties should provide a complete and accurate disclosure of their financial situation, including assets, debts, income, and any other relevant financial matters. This helps ensure that the agreement is enforceable and can prevent any challenges to its validity in the event of a divorce.
4. Carefully consider harsh or absolute terms: The terms of the prenuptial agreement must be fair and reasonable at the time of execution and at the time of the divorce. Prenups that essentially guarantee that one party will have little or no financial resources after a divorce are far riskier than agreements that provide some degree of financial support for both parties.
5. Review and update the agreement periodically: Couples should review and update the prenuptial agreement periodically to ensure that it reflects any changes in their financial situation or personal circumstances. This can help prevent any challenges to its validity in the event of a divorce. Revisions to prenuptial agreements that are made during the marriage generally fall under the law pertaining to postnuptial agreements.

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