

Beyond the Moral Clause: Finding Real Security in Your Agreement

Entering a marriage involves a great deal of trust, and it is natural to want assurances that your heart won't be broken. We often hear from clients who have been hurt in the past and want to ensure their future partner remains faithful. They ask if they can include an "infidelity clause" in their prenuptial agreement, stipulating financial consequences for an affair. Jos Family Law approaches this request with compassion but also with legal realism. While the desire for such a clause is understandable, California law operates on a "no-fault" basis, which creates a significant hurdle for these types of agreements.

The question "**Can You Write Your Own Prenup and Have it Notarized?**" often leads couples down a path of drafting unenforceable emotional contracts rather than binding legal ones. In California, the courts have a long-standing public policy against litigating the intimate details of a marriage. Judges do not want to be in the business of counting "fault" points or deciding if a specific text message constitutes "cheating." Because of this, clauses that attempt to punish a spouse for lifestyle choices—infidelity, substance abuse, or religious observance—are generally struck down as unenforceable. The legal system focuses on the economic partnership, not the romantic one.

This does not mean you cannot protect yourself. It simply means you must focus on the financial mechanics rather than the moral behaviors. Instead of a "cheating penalty," we focus on defining separate property with absolute clarity. We ensure that your pre-marital assets remain yours, regardless of why the marriage ends. We can structure the agreement to limit spousal support to the extent the law allows, or to clarify how community funds are reimbursed. By strictly defining what is "yours" versus "ours," you effectively protect yourself from a spouse who might betray you, without needing to prove the betrayal in court.

We understand that you want a document that reflects your values. However, a prenuptial agreement is designed to handle the economics of a divorce, not the causes of it. By attempting to add lifestyle restrictions in a DIY document, you risk "tainting" the agreement. A judge might look at an unenforceable moral clause and decide that the agreement was not entered into voluntarily or that it violates public policy, risking the validity of the protections that actually matter. It is better to have a boring, enforceable contract than an exciting, unenforceable one.

The best protection is not a fine for bad behavior; it is a clear, fair, and legally sound definition of your financial rights.

To create an agreement that honors your needs and the law, contact Jos Family Law. <https://josfamilylaw.com/>