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Couples must obey divorce agreement – even if circumstances change

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Postnuptial agreement must be 'fair' at the time of divorce

Legal Matters[®]

Who's getting married? Who's getting divorced? Census numbers tell the tale

The U.S. Census Bureau has gone back through its data from the 1940s to the present, and has compiled a new report analyzing marriage and divorce in America. Who's getting married? Who's getting divorced? And how are the answers changing over time?

One of the most interesting findings is that the divorce rate has started to level off and decline. But that's not necessarily because couples are more likely to stay together for life. Rather, a lot of couples are simply not getting married in the first place, so that when they split up, it doesn't result in a divorce.

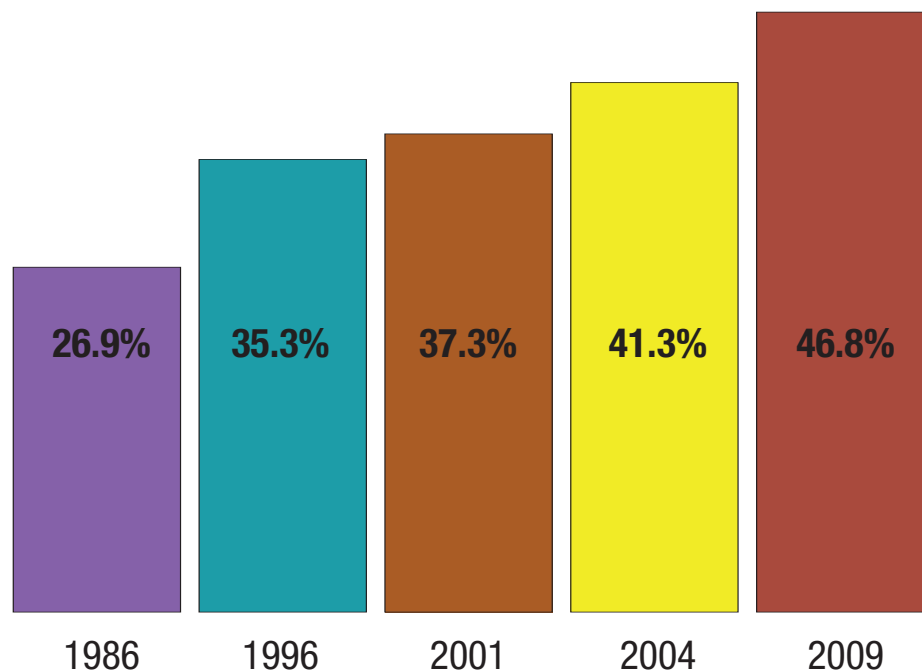
Here's a closer look at some of the findings:

People are waiting longer to get married. Back in the 1950s, the

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Americans are waiting longer to get married...

Percentage of adult women ages 25-29 who have never been married



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A property division usually can't be modified – even if unforeseen circumstances mean that one spouse got a much better (or worse) deal than anybody expected.

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Divorce agreement is valid – even if circumstances change

A typical divorce agreement may include a division of property, alimony, and child custody. In many cases, the alimony and custody rules can be modified at a later date if circumstances change. However, a property division usually can't be modified – even if unforeseen circumstances mean that one spouse got a much better (or worse) deal than anybody expected.

For instance, when an Alaska couple split up, they had to figure out how to divide some stock that they jointly owned in two companies. They decided that the husband would get the stock, and he'd pay his wife a total of \$50,000 for it in a series of installments over time.

Eventually, the husband fell behind on the payments, and the wife sued.

The husband argued that he shouldn't have to pay the rest of the \$50,000, because the companies weren't profitable, the value of the stock had declined, and his shares were no longer worth \$50,000.

But the Alaska Supreme Court sided with the wife. It said the couple had both agreed on the value of the stock at the time of the divorce, and they both bore the risk that they might be wrong. It noted that the husband would have to pay the same \$50,000 regardless of whether the stock turned out over time to be worthless or to be worth a fortune.

In another case in Georgia, a divorcing husband agreed that he would refinance the couple's home by a certain date in order to remove his wife from the mortgage. This was done so the wife would have an easier time obtaining a mortgage for a house of her own. The couple's agreement said that if the hus-

band didn't refinance by a certain date, he's have to pay his wife a \$10,000 penalty.

However, shortly afterward the bottom fell out of the real estate market, and despite his best efforts, the husband wasn't able to refinance in time. The wife demanded \$10,000.

A judge initially gave the husband more time, saying the soft real estate market wasn't his fault.

But the Georgia Supreme Court overruled the judge and ordered the husband to pay the penalty. The court said the agreement meant what it said, and since there was nothing in the agreement that conditioned the \$10,000 payment on the real estate market remaining strong, the husband was on the hook for the money.

Sometimes it's not clear whether something in a divorce agreement is about support or property division – and therefore, whether it can be modified later.

For instance, in a recent South Carolina case, a divorcing husband was required to pay for health insurance for his ex-wife until she either remarried or obtained employer-based coverage.

Six years later, after the husband lost his job and suffered a disability, he asked a court to end this requirement.

The wife argued that the health insurance clause couldn't be modified. But the South Carolina Supreme Court agreed said that the obligation to pay for health insurance was "support," not a division of property, and therefore it could be modified if circumstances had changed.

Husband could pay wife by transferring retirement benefits

A husband could satisfy a \$120,000 installment payment he owed to his ex-wife under their divorce agreement by transferring some of his retirement benefits to her, a Virginia court recently ruled.

The wealthy couple's divorce decree required the husband to pay the wife a total of \$1.2 million in 10 annual installments.

To make his first installment payment, the husband transferred to the wife \$120,000 from his

rollover IRA and 401(k) plans.

The wife argued that this violated the divorce decree because, due to taxes and penalties, she would net only \$61,000 if she cashed out the retirement benefits right away.

But the court sided with the husband. It said the installment payment was okay because the property he transferred to his wife had a value of \$120,000 at the time of the transfer.

Who's getting married? Who's getting divorced? Census numbers tell the tale

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median age for a first marriage was 23 for men and 20 for women. By 2009, though, the median age had risen to 28 for men and 26 for women.

More people are not getting married at all. As recently as 1986, 73% of women had gotten married before they were 30. By 2009, that figure had fallen to only 53%. Similar declines were registered for other age groups. For instance, in 1986, only about 3% of women reached age 55 without having gotten married. By 2009, that figure had tripled to more than 10%.

The figures are similar for men. Among men born in the early 1940s, two-thirds had gotten married by age 25, and 87% had gotten married by 35. But among men born in the early 1970s, only 36% had married by 25, and only 70% had married by 35.

The well-off are getting married. According to the study, marriage increasingly correlates with having more education and a higher socioeconomic status.

Divorce rates are leveling off. It appears the divorce rate in the U.S. peaked in the early 1980s. This was shortly after most states loosened their laws to make divorce easier, by no longer requiring people to prove in court that the other spouse had committed adultery or cruelty or was otherwise at fault.

Since then, there has been a slow decline in the divorce rate. For instance, in 1996, among women ages 25-29 who had ever been married, some 19% had been divorced. But by 2009, the number had fallen to 14%. Among women ages 30-34, the number dropped from 26% to 21%.

Among men born in the early 1940s, less than 12% had been divorced by age 30. Among men born in the early 1950s, the figure shot up to about 15%. But among men born in the early 1970s, the figure declined to about 10% – meaning that men born in this era were less likely to divorce than their fathers.

More than one in five Americans is divorced. Overall, including all American adults and not just those who have been married, some 21% of men and 22% of women have been through a divorce.

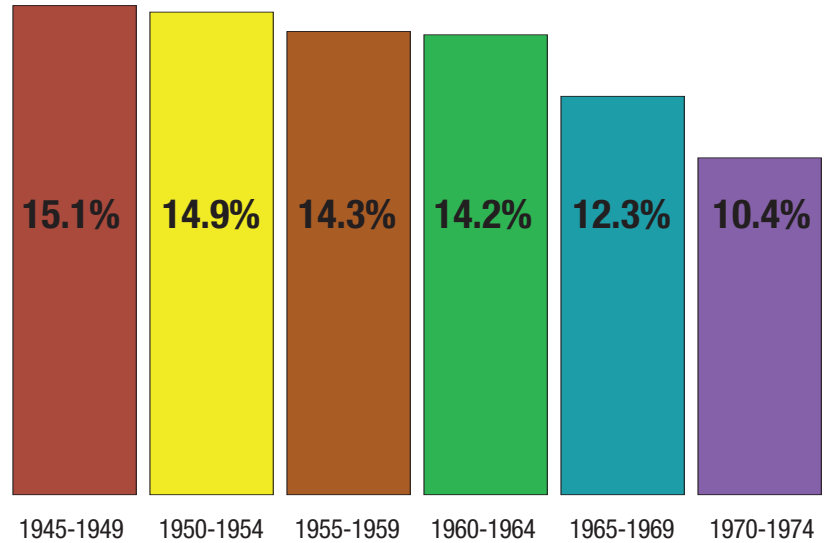
The median age for divorce is 32 for men and 30 for women.

Twelve percent of American adults have been married twice, and 3% have been married more than twice. The median age for remarriage is 36 for men and 33 for women.

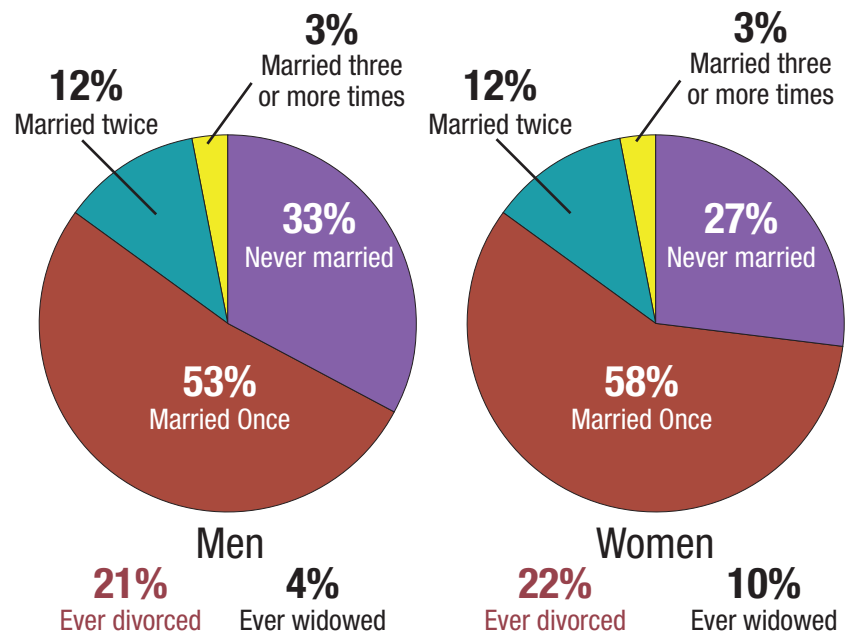
There really is a 'seven-year itch.' Among mar-

...and are less likely to get divorced than their parents

Percentage of men who were divorced by age 30, by birth year



American adults' current marital status



riages that end in divorce, the median time period between marriage and separation is seven years. Interestingly, among *second* marriages that end in divorce, the median time period from marriage to separation is once again about seven years.

American divorce rates are still higher than most European divorce rates, according to the study.

Source: U.S. Census Bureau

Postnuptial agreement must be ‘fair’ at the time of divorce

A postnuptial agreement is similar to a prenuptial agreement – it sets out what each person is entitled to if the marriage fails. The difference is that a postnuptial agreement is signed *after* the wedding has taken place.

Postnuptial agreements are increasingly being accepted as legally valid. But they’re not foolproof, and sometimes a spouse can avoid their terms – especially if those terms just don’t seem particularly fair.

For instance, the Connecticut Supreme Court recently refused to enforce a postnuptial agreement that a couple had signed back in 1989. Under that contract, the

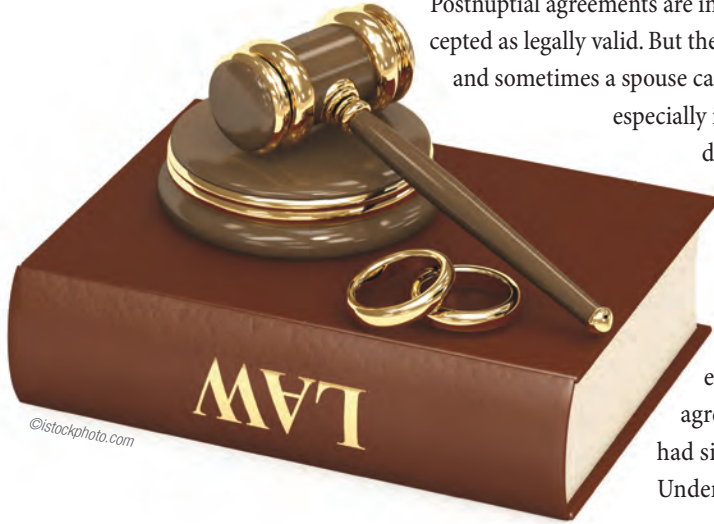
wife had agreed to accept \$75,000 as a cash settlement of any alimony claim if the couple split up, and gave up any rights to her husband’s car-wash business.

However, by the time the couple divorced in 2007, the car-wash business had taken off, and the amount the wife was entitled to under the agreement now represented only a small portion of the couple’s assets.

The wife argued that postnuptial agreements should be invalid in general.

The court didn’t go that far. It said that postnuptial agreements are okay...as long as they’re fair to both people at the time they’re signed, and as long as the terms are still “conscionable” at the time of a divorce.

But in this case, the court said the terms were totally unfair at the time of the divorce, because the wife would get only \$75,000 even though the couple’s assets were now worth nearly \$1 million.



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