

Prenuptial Agreements – A Safety Net

How do I love thee? Let me count the ways. Elizabeth Barrett Browning

So you are in love and have stars in your eyes. It seems so unimportant at the time of your upcoming nuptials to talk business, but it is a necessary part of your upcoming marriage. Many marriages today are second marriages where there are children from a prior marriage. Others get married later after they have become more established with their own assets or as owners of their own businesses. With a divorce rate that exceeds 50% and is higher for second marriages, it is essential that you protect your future by using a prenuptial agreement. This is particularly true if you are bringing significant assets into a marriage, you own your own business, you have family money, you have children from a prior marriage or are expecting a major inheritance. Yet only about 5% of couples heading into marriage actually sign prenuptial agreements. Why? What is a prenuptial agreement?

A prenuptial agreement is a binding legal document entered into by a couple prior to their marriage which states what will happen to their income and assets during a marriage and what happens to their income and assets in the event that the marriage ends in death, divorce or separation. The parties to the agreement make full disclosure to each other of their assets and liabilities and set forth in as much detail as they wish, what will happen during and after their marriage. A prenuptial agreement will generally not preclude a couple from making gifts to each other during a marriage if they so choose or making a will after the date of the prenuptial agreement that leaves their estate to their spouse (although this may defeat the purpose of the prenuptial agreement).

In order for a prenuptial agreement to be valid, it is essential that each party be represented by separate lawyers and that both parties make full disclosure of their assets. It is important that both parties understand what it is that they are signing, what they are giving up or receiving through the document. The attorney will explain to the party what their normal rights are as a spouse in the circumstance of death or divorce or separation, which may (and usually is) different from the prenuptial agreement. While it may be tempting, don't take a form off the internet just to save the legal expense, if you want the agreement to be valid.

You may think it terribly unromantic to consider how you will financially break up even before the knot is tied, but consider some of the following examples:

- You or your partner have substantial credit card debt amassed before your marriage and you do not wish to be responsible for this debt. This can be covered in your prenuptial agreement that it shall be the sole responsibility of the party whose debt it is.
- You have children from a prior marriage and you want to make sure that they inherit the assets that you accrued prior to your second marriage. If you died without a prenuptial agreement or divorced, your children might have to share part of this amount with your new spouse.

- You may have a share of a family business before your marriage and you want to keep it in that side of the family. If you died without a prenuptial agreement or divorced, your new spouse might share in the family business which would dramatically change the family interaction at the business.

These are but a few examples of reasons why you should execute a prenuptial agreement. While none of these reasons are romantic, once you negotiate your way through a prenuptial agreement, you will have a better knowledge of the financial implications of your romance and will be in a better position to work together on the financial aspects of marriage.

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