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Prenuptial Agreements

By Johnette Duff

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by: **Johnette Duff**

"Til death do us part" is still the language used in most weddings. Couples enter marriage with the hope of making a lifetime commitment. If this goal is not reached or if a spouse dies, the desire to be a couple is so ingrained that most will marry again.

The inability of the marriage laws to meet the needs of many couples makes the concept of a marital agreement quite positive, despite the bad publicity premarital agreements have reached. The freedom to structure a relationship should not be determined by laws that do not reflect the changing realities of family life in American today.

There is no firm tradition of marital contracts in our country because of the inherent resistance of comparing love to a business deal. Many civilized societies through the ages, however, have documented marital agreements with written documents.

Celebrities and the media have made couples aware of the concept of a contract executed between a married couple, whether terming it a premarital, prenuptial, antenuptial or postmarital agreement. The rich have known about them for years, but middle-class America, alarmed about the rising divorce rate, is anxious to know more.

Who Needs Them?

Anyone about to enter a marriage who is concerned about the inadequacies of the laws in the face of today's social realities;

Anyone who is remarrying;

Anyone concerned about protecting the assets of children from a prior marriage;

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Anyone who has a financially dependent parent;

Business owners, particularly of professional practices and particularly those with business partners, because a spouse effectively becomes a silent partner in the business;

Anyone with significant separate property in states where a spouse is entitled to a share of income from separate property.

Anyone whose intended spouse has significant premarital responsibilities, such as alimony, child support, or tax obligations.

Anyone cautious enough to prefer a written record of the ownership of assets to avoid confusion in the future from creditors or other family members.

It's not romantic; it's practical. And limiting a spouse's take upon divorce is far from the only purpose, despite the perception gleaned from the popular press. Doesn't it make sense to make decisions under the best of circumstances instead of during the emotional upheaval of a troubled relationship?

As with most things, there's good news and bad news about private marital contracts. The openness needed for such an agreement is good for a relationship; the implication of a lack of trust is bad. A marital contract can avoid expensive and emotionally debilitating divorce trials, but it's expensive to enforce any contract in court. Such an agreement will reduce to writing the agreement for division of property upon divorce, although it can prevent a spouse from obtaining marital rights upon divorce.

The love and the law newsletter is written by Johnette Duff, Attorney at Law*

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Preuptial Agreements: Should They Be A Prerequisite To Marriage?

By "Bernard Berkowitz Esq."

While not exactly the glamorous side of a marriage proposal, the idea of a prenuptial, or ante nuptial,

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agreement is something that most people about to be married should discuss. In case a marriage doesn't work or one spouse dies before you have a chance to do a comprehensive estate plan, a prenuptial agreement can safeguard assets, protect one party from the other's debts, and make any possible divorce proceedings go more smoothly without unnecessary rancor. Since more couples are signing prenuptial agreements, you need to discuss this openly with your intended spouse.

Some prenuptial agreements can cover day-to-day details such as who will pay the mortgage and other bills or how child care is to be handled. Since more couples are signing prenuptial agreements, you need to discuss this openly with your intended spouse. If you both feel a prenuptial agreement fits your situation, you each need to see a lawyer to discuss it further.

Even though more prenuptial agreements are being signed than ever before, it is something to consider only if one of the following applies to you:

If either of you have children from a previous marriage. If you own a business or are involved in a family run company. If either one of you have significant assets which you want to keep separate. If you are concerned about the amount of debt of the other party. If you are giving up a lucrative career to get married. Once you have decided if you need a prenuptial agreement and what should be in it, the question becomes whether or not it will be valid and enforceable. There are certain essentials to creating a valid prenuptial agreement:

The agreement must be in writing and executed before the marriage, preferably in front of a notary public. Neither party should be put in the position of having to sign the agreement on short notice. If your future spouse confronts you with an agreement on the day of your marriage, it will probably not be enforceable.

The agreement must be fair and reasonable under all of your circumstances and based on full disclosure by both parties of all assets and liabilities. One lawyer cannot fairly represent both parties. Each party to the agreement should have their own attorney to prepare/review the document and answer all of your questions before signing.

The sooner before the wedding date that you prepare the prenuptial agreement the better it will be for both of you and your relationship. Either party broaching this subject is likely to be suspected by the other of lack of trust. However, since more than half of all marriages do end in divorce, having a prenuptial agreement should be considered a very practical thing to do and not a doomsday expression of your marriage's chances. In fact, open communication with your new partner could be the best way to start a new relationship.

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