

A Brief Guide to Prenups

Making an inherently sticky situation a little less sticky

If you've been thinking that a prenuptial agreement might be a nice precautionary measure to have in your back pocket, you're not alone. Romantic notions are increasingly giving way to pragmatism in recent years: A survey by the American Academy of Matrimonial Lawyers showed that 62% of the responding attorneys saw a rise in prenups between 2013 and 2016.

WHY HAVE A PRENUP?

So who is making use of this financial planning tool? Among the reasons that might make you want to consider one:

- *You have children from prior marriages.* In one of the least contentious scenarios for a prenup, it can be used to make sure that your children will still inherit your property, no matter what else happens. Without a prenup, a divorcing spouse could have the rights to what you intended to go to your kids.

- *You own your own business.* In addition to keeping your company in your hands, you may want to make sure you keep control of any relevant intellectual property as well. Not all valuable property is physical.

- *You or your spouse is carrying a lot of debt.* Even in a relatively smooth scenario, divorce can affect your credit rating, and taking on responsibility for your ex-spouse's debt can be a real financial hit. Substantial student loan debt alone can be reason enough to consider a prenup.

- *One of you has substantial stock options.* In many states, any assets acquired during the marriage are marital property, even if they're not cashed in until later. The expectation of future wealth – which may or may not come during the course of the marriage – may require additional steps to safeguard it. ►

A Brief Guide to Prenups *continued*

One reason not to sign a prenuptial agreement is if you're worried about child custody or support issues. Courts tend to make these decisions based on the best interests of the child rather than the best interests of the parents, so a prenuptial agreement would not carry much weight in this scenario.

If you're worried that asking your future spouse to sign a prenup might threaten your marriage, you should know that there haven't been any reputable studies demonstrating that a prenuptial agreement makes a marriage more likely to end in divorce. In fact, some experts have argued that a prenup shows how seriously you're taking your marriage and may strengthen it in the end. But the plain fact is that no one really knows what the effect is.

BEST PRACTICES FOR A PRENUP

So if you're concerned that a divorce might upend your financial situation, it might be worth broaching the idea of a prenuptial agreement with your spouse-to-be. If you're serious about implementing one, be sure to take these precautions:

- *Make it very legal.* There are online do-it-yourself prenup forms you can print out and sign, but that doesn't make them legally binding. If you want your agreement to stand up in court, at the very least have it reviewed by an attorney. One of the most famous stories in prenup lore concerns the director Steven Spielberg and the actress Amy Irving, who literally wrote their prenuptial agreement on a napkin. Unsurprisingly, the document was found not to be legally binding, and Spielberg ended up paying his ex-wife \$100 million after their divorce.
- *Hire your own lawyer.* Yes, this is a time when you and your intended are joining your lives together. But whether the prenup is your decision or your spouse's, it's important to have an advocate who is specifically on your side, concerned with only your best interests.

- *Don't try to hide anything.* If you inherited a ski condo from your grandmother five years ago, but don't want anyone else to know about it, it's time to fess up. The same applies if you still owe a sizable sum on that time share you bought. If your spouse can show that you omitted key financial disclosures from the prenup, the whole thing can be set aside.

- *Focus on your finances.* Stay away from nonfinancial demands, such as that you'll get to avoid your in-laws or that your spouse will maintain a certain weight. Courts tend not to enforce these things.

- *Avoid surprises.* You can't just spring a prenup on someone at the last minute. Courts have frowned on agreements that were signed a day or so before the wedding, finding that it presents undue pressure on one of the parties. In general, a prenup should be completed and signed one to three months prior the wedding.

- *Take your time.* Another reason to plan ahead is that you will want to make sure you have thought of everything that the document needs to cover. Make sure everything is clear and fair and that your spouse-to-be is as content with the language as you are. Starting the conversation early means that you can both get used to the idea without feeling pressured.

Prenuptial agreements are inherently tricky in both the emotional and the financial aspects. If you're considering one for your upcoming wedding, your Baird Financial Advisor can help prepare a net worth statement or asset inventory prior to the big day. Then we can help you craft prenuptial language that safeguards your marriage – as well as your financial future.

Please reach out if you or anyone you know would benefit from discussing this topic further.