

Prenuptial Agreements: What to Know Before You Tie the Knot

By Kathleen M. Newman

Among the most common questions asked of an attorney practicing family law is whether an individual should consider a prenuptial agreement before heading into marriage. As is the case with most questions, there is no single one-size-fits-all answer. Depending on the individual and his or her individual circumstances, a prenuptial agreement could be a very wise investment in time and money. In this article, I will share a list of do's and don'ts for considering your prenuptial options before you prepare to say your own "I do's."

The Do's

1. CONSIDER WHETHER A PRENUPTIAL AGREEMENT IS EVEN NEEDED

If you are young, with minimal assets and heading into your first marriage, you may not need a prenuptial agreement. On the other hand, your fiancé may require a prenuptial agreement if he or she has considerable assets. If this is your second marriage and you have children (including adult children) from a previous marriage, a prenuptial agreement may be worth considering for your own peace of mind and estate planning.

The profile of today's bride and groom has also changed from previous generations when two often penniless lovebirds began their lives together. Today, many couples marry later in life after achieving success in their own careers. They may have acquired homes and other significant financial assets and begun to build healthy retirement accounts they wish to protect in the unfortunate case of a failed marriage.

2. HAVE AN OPEN MIND

There is a preconceived notion that prenuptial agreements are callous and only favor one person, namely the one requesting it. We frequently see prenuptial agreements woven into television shows and in the movies with the classic scene involving a woman about to marry her wealthy prince. She is handed a document minutes before the wedding and forced to sign so the couple can live happily ever after.

The reality is quite different. A prenuptial agreement is carefully crafted and both parties are made fully aware of the contents before signing. Some couples adopting prenuptial agreements may be coming out of a divorce themselves or may have experienced a messy divorce between their parents earlier in life. These couples are realists and have a shared desire to protect and not destroy each other in the unfortunate case of a future divorce.

3. CONSIDER THE TROUBLE A PRENUPTIAL AGREEMENT COULD SAVE YOU

A simple prenuptial agreement might cost a couple thousand dollars. Compare that to the hundreds of thousands you could spend battling out a nasty divorce.

The emotional cost is equally high. Imagine months of back and forth arguing over every asset. If a couple is on bad terms, this process could take years. It is time consuming and emotionally and physically draining for the parties involved. A prenuptial agreement can help eliminate much of the confusion, fighting and back-and-forth that often occurs at the time of a divorce.

The Don'ts

1. DON'T ASSUME A PRENUPTIAL AGREEMENT IS SET IN STONE

In Minnesota, a prenuptial agreement must not only be fair at the time it is created, but it must also be deemed fair at the time of the divorce. At that time, circumstances may have changed including employment, health and the presence of children. Some of our cases have involved couples who had children not initially anticipated at the time a prenuptial agreement was signed, people who have experienced debilitating illness during the marriage and others who have experienced lifestyle changes, such as becoming stay-at-home parents. In these cases and others, prenuptial agreements can be contested and changed.

2. DON'T SKIP THE FINANCES TALK

Deciding whether a prenuptial agreement is right for you is your decision. Every situation is unique. If you're trying to decide if a prenuptial agreement is a good idea, maybe it is best to first have a more general talk about money. For the best outcome, try to get a good sense of your partner's approach to finances before becoming engaged. Talk openly and honestly about financial situations that you may have to deal with as a couple and share your expectations and any anxieties you may have about money.

3. DON'T AVOID DIFFICULT DISCUSSIONS

For most couples planning to wed, the very thought of a post-divorce existence will feel depressing. However, even with the talk of alimony and tax consequences, the prenuptial process, when done correctly, can in fact draw a couple closer.



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Knowing that the person you are committing to for the rest of your life is open to discussing any issue, regardless of how awkward or difficult, is comforting. The bottom line is to make sure you use your head when planning marriage and consider a prenuptial agreement as a means of protecting each other in the event you do someday decide to end the marriage.

4. DON'T WAIT TOO LONG

One final word of advice regarding prenuptial agreements. It is very important to have this conversation with your future spouse-to-be early and well in advance of the wedding. Rushing to sign a prenuptial agreement before the wedding is never a smart decision and can cause unnecessary anxiety at an already stressful time. In some cases, it may even cause the agreement to not be enforceable.

Kathleen M. Newman has experience in all aspects of marital dissolutions, and has represented individuals on complex matters involving business ownership, valuing professional practices and financial analysis. Kathy sets herself apart through her strong advocacy of custody, support and parenting agreements. A board certified trial advocate in family law, a skilled mediator and a certified life coach, Kathy is also a fellow in the American Academy of Matrimonial Lawyers. Among her accolades, she has been consistently named a Top 40 Super Lawyer for family law and one of the Best Lawyers in America in family law. For more information, please visit www.kathynewmanlaw.com.



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