

Add Prenuptial Agreement to Your Wedding Plans

True, it may seem unromantic. But couples who plan to exchange marriage vows ought to consider a prenuptial agreement long before saying “I do.”

Yes, there was a time when only the wealthy executed such agreements. But now more and more couples, especially those who have been married before or who have a blended family structure, need to evaluate the pros and cons of a prenuptial agreement as part of their wedding plans.

In essence, a prenuptial agreement, also known as an antenuptial agreement or premarital agreement, is nothing more than a written contract created by two people before they are married. It can be used to accomplish many legal and financial objectives, but in general couples use it to protect separate property (a family business, for instance), support an estate plan, define what is marital or community property, reduce conflicts and save money in the event of divorce, clarify special arrangements and establish procedures and ground rules for deciding future events.

Typically, the agreement spells out what each person owns (assets) and what they owe (liabilities) prior to a marriage and then it details how those assets and liabilities will be disposed after separation, divorce or death. It might also detail how assets and liabilities acquired during a marriage (say through an inheritance) will be disposed after separation, divorce or death, as well.

In short, a prenuptial agreement can help make sure there is an orderly process if a marriage ends. But that order will turn to chaos if certain conditions are met. Of course, meeting the below conditions doesn't guarantee that an agreement won't be challenged by an unhappy spouse or struck down in court. But it can go a long way toward making sure there's marital bliss in the short-term.

Full disclosure. Each spouse should prepare a detailed financial statement when drawing up a prenuptial agreement, including all assets and liabilities, annual gross income, interests in family trusts, and even potential inheritances. Full disclosure ensures that each spouse understands what he or she is getting and giving up, and failure to do so can result in a prenuptial agreement being set aside.

Fairness. The agreement should be fair. Courts tend to strike down agreements that favor one spouse over the other. Plus, courts will set aside agreements where there is ink on the wedding dress, those signed under pressure, within 48 hours of the wedding.

In writing. Though states have different laws about prenuptial agreements, they basically follow the same general form. A prenuptial agreement is a written contract signed by the two prospective spouses and witnessed by a notary. These agreements needn't be filed with a court and can be drawn up by the two prospective spouses without assistance.

Hire a lawyer to review the agreement. Each spouse should hire a lawyer to review the contract and make sure their interests are protected and that the agreement follows the letter of that individual state's law. Some agreements get struck down because each spouse didn't hire a lawyer to review the agreement.

Add clauses. Generally, the agreement should contain a clause stating that if any provision of the agreement is invalidated, the rest of the agreement remains valid. Couples should also add a clause that makes sure the laws of the state in which the couple were married govern should they get divorced in another state. In the absence of such a clause, couples who get divorced may have their assets divided according to the laws of the state in which they reside. Thus, community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) will generally divide in half the couple's assets acquired during the marriage, while other states (the equitable distribution states) may decide how to split the assets fairly, based on years of marriage, status of children, lifestyle considerations, and any number of other factors. Adding a clause that details how a decedent's assets (in the absence of a will) will be passed to particular individuals – such as children from a prior marriage – can be helpful as well. And the agreement should contain a clause stating that all arrangements between the prospective spouses are included in the prenuptial agreement.

Specificity and circumstances. Couples might also quantify "maintenance," the amount of alimony a divorced spouse may receive from his or her wealthier counterpart. In addition, an agreement could speak to the preservation of a business, family assets or family fortune held prior to the marriage such that those assets stay with the original owner should the marriage end in divorce. In many cases, a wealthy family will want to ensure that assets gifted to an adult child do not become the property of the non-blood-related spouse in the event of divorce. In still other cases, couples about to exchange marriage vows might also consider protecting separate property through other more sophisticated legal tools such as irrevocable trusts, revocable living trusts, or family limited partnerships.