



New vow: 'Til prenup do us part

7 situations in which the legal document is advisable

By Dave Carpenter
The Associated Press

CHICAGO - You're young, you're in love, you trust each other. No need for a prenuptial agreement before you tie the knot, right?

Not so fast, you with the rose-colored glasses. As wedding season gears up, it may be time for some unsentimental planning before you walk down the aisle.

Demand for prenups is increasing nationwide as more people become aware that they're not just for the rich and famous. Roughly 40 percent of marriages fail, after all, so there's nothing disloyal or cold-hearted about preparing for contingencies.



"If close to half of all marriages are going to end in divorce, it makes sense to plan for it," says Marlene Eskind Moses, president of the American Academy of Matrimonial Lawyers.

A prenuptial agreement is simply a legal document that describes how property and assets brought into and acquired during a marriage will be treated if there's a divorce.

It isn't essential for everyone. A couple entering a first marriage with few assets, debts or other extenuating circumstances can generally forego the expense. With two lawyers recommended — one for each person — even an uncomplicated prenup can run \$2,000 to \$3,000 or more.

The cost goes a long way toward explaining why still only 3 percent to 5 percent of married couples have prenups. They are most popular with baby boomers in the 40-to-60 age range, who have more money and can afford to pay for adequate protection.

Yet it can pay off in the long run.

"It has the potential to save a tremendous amount of legal fees" in the event of divorce, says Robert Maloney, a financial planner in Holderness, N.H.

While awareness of prenups has grown because of high-profile celebrity divorces, it remains the touchiest of subjects for couples to discuss.

If one partner mentions a prenup, the other's reaction is inevitably "You don't love me!", says Carol Ann Wilson, a financial adviser specializing in divorce in Longmont, Colo. People need to view it as a routine part of the business of getting married, she says, along with planning for budgets, spending and children.

"It's just a piece of paper that sits in a drawer and protects them in case they don't have a happy marriage," Wilson says.

To broach the subject in a nonconfrontational way, one partner might propose scheduling a financial discussion for, say, 7 to 9 p.m. one evening, followed by a romantic date afterward. The business chat can include talk about what kind of budget they're going to have, whether they need separate checking accounts, savings goals, spending limits and, yes, a prenup.

So who really must have one?

Here are seven situations in which a prenup is advisable:

1. When significant assets are involved, such as a home, stock or retirement funds.

Both sides need protection from the consequences of any breakdown of the marriage in this instance.

2. When there are children from previous marriages.

Any time children are involved, there's an extra incentive to protect their interests. Most states will give the surviving spouse up to half of an estate, leaving the children no say. That could be at least partially avoided by using a prenup.

3. When one partner owns all or part of a business.

In a breakup, the attorney for the other partner will likely go after a share of the "family" business.

4. When one partner is much wealthier than the other.

A one-sided money situation can easily be cause for jealousy or, later, legal dispute.

5. When one spouse-to-be is much older.

The older partner may not be able to recover to provide for his or her retirement if assets are split 50-50.

6. When one partner will be supporting the other while he or she pursues a degree.

A \$100,000 debt for grad school could easily outlast the marriage.

7. When an inheritance is expected.

Even without big money involved, some see a prenup as critical for any marriage that's not the first for either side. "In any second or third marriage, I believe it should be required," Maloney says.

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