

A Contract of Love

Why Every Smart Bride (and Groom) Should Consider A Prenuptial Agreement

The sight of lovers feedeth those in love. William Shakespeare; As you Like it 3:4

There is just something romantic about this time of year. In Pensacola, we know that the cold weather is about to give way to a glorious panhandle spring and frequently our first days of warm weather coincide with the heady season of love and St. Valentine's day. The jewelry stores start preparing for the engagement and wedding season and increase their diamond inventory, restaurants plan special menus and florists put in their orders for the red roses to be delivered all around town. Ladies who are well loved by the right man become more beautiful every day and the men who love them become more confident. If you have ever witnessed a couple become engaged, the nervous posture of the groom-to-be and the excitement of the bride-to-be cannot help to elicit a feeling of hope in the observer. Yes, Shakespeare was right; the sight of lovers is like seed for lovebirds.

Ahh and a bride-to-be, constantly looking down at her hand admiring the way her ring catches the light, flipping through magazines at dresses and decorations and putting in place the wedding she has had planned in her mind since she was a little girl. The cake, the dress, the party! And just as the fun of the wedding planning is being undertaken, someone dares to ask "Are you getting a pre-nup?" Gasp! Who would cast this shadow of doubt on a newly engaged couple?

Yes, over the years the word pre-nup has become a dirty word for hopeful and committed brides and grooms. It is understandable of course, as who wants to enter a marriage with the expectation of it failing; why plan for the end your marriage when you have just committed to undertake this life in a permanent partnership? But what if the discussion about a prenuptial did just the opposite? What if it solidified your commitment instead of polarized it?

Prenuptial agreements have been around for centuries. In the Jewish faith, the bride and groom not only make an emotional and spiritual commitment to one another through marriage, but also make a legal commitment through the use of a *ketubah*. In a ketubah, the mutual responsibilities of the parties are outlined for the couple both during the marriage and if necessary upon their divorce. The true historic goal of the first prenuptial agreements therefore was not just for divorce planning, but also for marriage planning. Over the years, society's view of prenuptial agreements has deviated from his idea. It's no wonder when celebrity breakups and the extreme terms of their prenuptial agreements highlight nothing but their selfish motives and greed. But the reality of a well thought out prenuptial is the exact opposite and has less to do with protecting your "stuff" from the other person and more about writing your own plan for your future as husband and wife.

1. Smart Brides and Grooms know that their marriage will end.

Smart couples know that even though they do not intend, and do not want, to ever dissolve their marriage, the possibility of dissolution is a reality. The current national divorce average is somewhere around 40%, down from recent years where it topped 50%. While every newly engaged couple is hoping and expecting to beat those odds, smart brides and grooms do not ignore the possibility of dissolution. Aside from the possibility of divorce, smart brides and grooms know with *certainty* that if divorce doesn't end their marriage, death will. Prenuptials not only help outline terms for divorce, but also establish terms for inheritance and estate planning. When a person dies, Florida law provides for how that person's property is transferred. Similarly, if a couple divorces, the law will dictate the terms of that divorce. In instances, a statute or a judge interpreting the facts to the relevant law can ultimately make very personal decisions for families. A prenuptial is a contract that sets forth some minimum terms in both and smart brides and grooms use a prenuptial to decide that when the marriage ends, due to either death or dissolution that their lives will be governed by the terms of their own agreement, rather than by any terms dictated by a statute or a judge.

2. Smart Brides and Grooms Know They Have to Talk about the Hard Stuff

Ask any couple who has been married for a long time what their secret of success is and they will likely tell you "communication." In fact, the Pastors, Licensed Mental Health Counselors and other people involved in helping struggling marriages that I work with on a regular basis will tell you that couples are headed for divorce when they can no longer communicate. A prenuptial agreement forces a couple to have conversations about difficult subjects like finances, death and honesty before they take the leap. Smart brides and grooms believe that that by openly discussing these matters, they are solidifying their commitment and love for each other and setting a pattern of open communication that will stay with them for the duration of their relationship and married lives. This is accomplished in several ways as the prenuptial is negotiated. Enforceable prenuptial agreements often require full financial disclosure of each party's assets and liability and forces the parties to think about their positions on legal issues like alimony, marital assets and debt and inheritance. A good prenuptial agreement also helps the couple outline how finances will be handled during the marriage and can address financial issues like separate bank accounts and individual earnings.

3. Smart Brides and Grooms Want to Understand the Rules of the Game

Most people do not know the rules of the game when it comes to divorce or death. There is no doubt about it that when you get married, you are entering into a contract. Saying "I do" means they are committing themselves to certain spiritual and emotional responsibilities, but also certain legal rights and responsibilities under the law. But, when you think about it, it is probably the only contract that you enter into without understanding what those rights and responsibilities really are. Few couples know if they will have to pay alimony or not if they divorce, whether or not keeping the title of a property in the name of only one party will determine who it will belong to after divorce, or how assets and debt would be divided in the event of a divorce. The first time they learn about the rules of the game, it is after someone has

filed for divorce or one party has died. Then it can be too late. A prenuptial helps a couple understand what the law says about marriage, divorce and death and helps them decide at the outset, whether or not they agree with the laws. The prenuptial can then override the current law in many instances and create the “law of the marriage” for this couple. Don’t believe in alimony? You can waive your entitlement to it via your prenuptial. Believe that forgoing a career to stay at home with children should be financially compensated for? Contract for that compensation. Want to require that the title controls ownership for all the property acquired during the marriage? Include it in your agreement. A smart bride and groom use a prenuptial to write their own rules.

As a divorce lawyer, I don’t get the opportunity as often as I would like to facilitate the creation of families. Honestly when I started doing prenuptial agreements, I had the impression that they were just for the wealthy, blended families or for couples who really didn’t think they were going to “make it” long term. But the more brides and grooms that I represent, the more value I see in the process of creating a prenuptial agreement and making financial decisions together. A recent prenuptial client recently said, “If we can talk about thing like whether or not to have a baby, we should be able to talk about the real embarrassing things like my credit card debt.” As this particular couple was leaving my office on the date they executed their prenuptial agreement, they looked at me and the other attorney and informed us that their next stop was the courthouse, to get their marriage license. “Now that we signed this contract of love, let’s make it official.”

Seed for this lovebird’s soul.