



Prenuptial agreements: A friend or foe?

By Mitchell K. Karpf

The selection of a marriage partner and the planning of a wedding are indeed joyous, exciting times filled with champagne, flowers, gifts and romance.

As couples chart the course of their future lives together amidst the celebration, important issues often arise that require thoughtful resolution. Financial integration is one of those key issues.

For example, do either you or your future spouse expect to inherit a substantial family fortune or assume control of a family business? Are you concerned about preserving family assets?

Are either you or your future spouse a young professional or entrepreneur who prefers to keep the financial aspects of your business success separate from your financial life once married?

Are you entering a second marriage where you and your future spouse have substantial separate assets that each of you want your respective children to inherit outright?

If you answered "yes" to any of the foregoing questions, a prenuptial agreement may offer significant advantages as a planning vehicle to accomplish your financial objectives in the event of death or dissolution of marriage.

Unsurprisingly, the topic of prenuptial agreements often triggers intensely personal feelings that are largely a function of socioeconomic status, cultural background and beliefs regarding the institution of marriage itself. Opinions vary widely about the utility and even desirability of prenuptial agreements.

For example, some believe that a marriage is inherently doomed



to fail if one party is even contemplating a prenuptial agreement. Others believe that addressing potentially divisive financial issues in advance of marriage contributes to a healthy marital relationship based upon communication and trust.

Then there is high-profile business executive Donald Trump, who has pronounced that any wealthy individual who marries

without a prenuptial agreement should be institutionalized.

Regardless of where you, your future spouse, or even your parents may stand on this important issue, the key to making the right personal decision is understanding how the law works in the absence of a prenuptial agreement, and communicating openly with your partner and any other involved parties.

Property distribution laws vary by state. Florida is an "equitable distribution" state. As such, in the absence of a prenuptial agreement, Florida law generally provides for equal division of all marital property. Depending upon the circumstances, the law may also allow an exemption for nonmarital property which is acquired before the marriage or which is acquired during the marriage by gift or inheritance provided there is no commingling or increase in value due to marital effort. An unequal division may be justified if one spouse can support a "special equity" as to a certain marital asset, or show any other clear and convincing justification for unequal division.

A valid prenuptial agreement essentially enables a couple to override state laws regarding how assets should be divided in the event of death or divorce and thus provide valuable control.

Refer to next month's issue of the Gazette's Bridal Section for recommendations with regard to structuring a valid prenuptial agreement.

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