

Until death (or divorce) do us part: How to prepare

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So you or someone you love is getting married. Congratulations! Aside from deciding where to hold the reception and where to go on your honeymoon, other more serious questions may be on your mind. Do you need to take care of children from a previous marriage? Do you want to protect family wealth or a family business? Do you prefer to be financially independent from your future spouse? If the answer to any of these questions is "yes," then you may want to walk down the aisle on your wedding day with a prenuptial agreement.

A prenuptial agreement helps a couple decide in advance how to divide their assets should they divorce or when either spouse dies. Without a prenuptial agreement or a will, state law will decide where your money goes, and perhaps not as you would expect. For example, in Florida, generally speaking, marital assets are divided in half upon divorce. Also, absent an agreement between parties to the contrary, a surviving spouse may receive less than one-third of the estate. In addition, a prenuptial agreement can save you a lot of money and heartache compared to a nasty divorce or a will that is contested.

If a prenuptial agreement is for you, there are several things you should keep in mind. First, discuss the topic sensitively with your intended spouse well in advance of the wedding. Handing a prenuptial agreement to your sweetheart for the first time the night before the wedding is a surefire way to ruin the joy of your wedding day. Doing so also practically ensures that a court will not enforce the agreement on the grounds that your spouse was under duress when he or she signed it.

Second, both you and your future spouse should have your own attorney work out a deal that is fair in your eyes and under the law. Your attorneys should be specialists in marital law. If you and your future spouse are not represented independently, a court likely will

set aside your agreement whenever you try to rely on it. It takes several weeks to discuss and finalize the details of a prenuptial agreement with legal advisors, so allow plenty of time.

Third, you must be unmistakably honest about your finances and disclose them fully to your future spouse before you both sign the prenuptial agreement. If you misrepresent or withhold any information about your finances, a court will hold this misdeed against you and likely set aside the agreement for fraud or lack of disclosure.

There are several ways to customize a prenuptial agreement. For example, if you do not want anyone to know that you have a prenuptial agreement, or if you want to keep certain family business information private, you can add a confidentiality clause. If you want to divide your assets differently depending on how many years you remain married, you can do that, too. Some couples agree in their prenuptial agreement that it will be void and unenforceable if they remain married for more than a certain number of years, usually between 15 and 25.

You should be aware that even if you want your prenuptial agreement to spell out who is responsible for taking out the garbage, who will have custody of any children, how often you will have sex, or in what religion the children will be raised, these types of provisions may be unenforceable.

Whether you and your future spouse say the words "I Will" to a prenuptial agreement before the words "I Do" at the wedding altar is a very personal decision that you should make after carefully considering all factors. After all, nobody has ever said that falling and staying "in love" is easy!

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