

JOURNAL REPORT | BIG ISSUES

Is a Prenuptial Agreement a Must for Most Couples?

It may not be the most romantic idea, but many couples planning to marry opt for prenuptial agreements. In a survey of 1,600 members of the American Academy of Matrimonial Lawyers, a professional group based in Chicago, published in October 2013, 63% of the respondents reported an

increase in prenups over the previous three years. Prenups come into play in divorces, of course, but that's not all. Besides establishing how assets are divided when a married couple splits up, prenuptial agreements also can determine who gets what when one spouse dies.

With that kind of power over people's financial fates, these are controversial documents. Some proponents of prenuptial agreements argue that they protect the interests of both parties to the agreement and prevent nasty, costly court battles when a relationship ends,

But some critics say the nastiness that can arise in negotiating a prenup can cripple a marriage before it even starts, and that there are laws on the books that do a better job in most cases of balancing the interests of both spouses when they split or one dies.

Yes: It May Not Be Fun, but It Can Save A Lot of Heartache

BY CHERYL L. YOUNG



SO, YOU'RE GETTING married. There is so much to do. You have to pick the rings, the venue and the band. And the lawyer? Unfortunately, that should be on your to-do list.

The reality is that many marriages end in divorce, and of those that don't, 100% end

in death. In either case, there are assets to be distributed. While it is certainly unromantic to discuss and negotiate a prenuptial agreement between the time of your engagement and the wedding, an agreement can save a lot of heartache and money when it comes time to distribute those assets.

To be sure, not everyone needs a prenuptial agreement. The most commonly exempt: a young couple getting married for the first time, with little or no assets, who are looking to make a life together and grow their marital estate beginning at the date of their marriage, without expectation of large inheritances or trusts from their families.

But for those fortunate enough to come into a marriage with either assets of their own or the expectation of assets from a trust or inheritance, a prenuptial agreement is a must-have. It provides certainty for both parties and protections that go beyond the laws governing the division of assets.

Share as You Want

First, a prenuptial agreement can protect each spouse's premarital assets from a claim by the other spouse in the event of death or divorce. In most jurisdictions, assets that one party owned at the time of marriage aren't subject to a claim by the other spouse in the event of divorce—but any increase in the value of those assets during the marriage may be subject to a claim. Also, in the event of death, even if a party doesn't make a provision in his or her will for the spouse, state law likely will grant the spouse certain rights to a share of the decedent's estate.

In other words, if your premarital estate is significant, it makes sense to ensure that your spouse will share in it only as much as you wish

should you divorce or die. This is especially true if you have children from a prior relationship whose inheritance you want to protect.

Second, a prenuptial agreement can protect income and assets acquired during the marriage. For instance, without a prenuptial agreement, a party may have a duty to pay support or alimony to the other spouse. An agreement can set that amount—or eliminate it—so it isn't a cause for litigation and argument down the road.

Such certainty makes it easier for both parties to plan. It's particularly valuable, say, if one spouse has an interest in the family business at the time of marriage, or acquires additional interests in businesses during the marriage. Without an agreement in place, determining the marital and nonmarital portion and the value of these businesses can be messy, expensive, emotional and time-consuming.

The Power of Knowing

There's no question that prenuptial negotiations can be difficult emotionally. But the pain caused by an ugly divorce where the parties are fighting about asset values and distribution, as well as alimony, is much more corrosive, especially when children are involved. Better to endure some discomfort early on than years of fighting down the road.

Rather than weaken the marriage, as some critics suggest, a prenuptial agreement can actually strengthen a marriage, because both spouses fully understand where they stand financially. Such an understanding provides spouses with some protection from the unknown—and the benefit of that certainty greatly outweighs the pain of an "unromantic" discussion before tying the knot.

Ms. Young is an attorney with Hanglely Aronchick Segal Pudlin & Schiller in Norristown, Pa. She can be reached at reports@wsj.com.

No: The Spouse With Less Money Has Only Bad Options

BY LAURIE ISRAEL



LET ME BE CLEAR: Premarital discussion about finances and money is a good thing. But if the goal of that discussion is a formal, signed prenuptial agreement, the process is fraught with problems and can cause significant damage to a marriage.

Prenuptial agreements do have their uses. They can be crucial peacemakers for couples who marry later in life, especially when there are children from a previous marriage. But in first marriages especially, they can set up permanent friction between spouses and their families.

Many prenups are unnecessary, overly broad and mean-spirited. These agreements foster marital selfishness, a destructive force for the couple and their coming marriage. Often, particularly in first marriages, the less-moneyed spouse is contracting away economic marital rights without even understanding what marriage entails. You have to be in a marriage for the long term before you really understand what it means.

In the end, many prenups weaken the marriage by causing an imbalance in the financial security of the two partners.

An Uneven Playing Field

The problems start with the negotiations for a prenuptial agreement, generally conducted

through lawyers. These discussions are almost always very painful and corrosive to the relationship. The spouse who has withheld money and marital rights from the other will often feel like a brute. Meanwhile, the less-moneyed spouse resents the process and will feel mistreated, and for good reason: That spouse is the victim of what is essentially an unfair bargain.

The playing field tends not to be level, because the less-moneyed spouse has no leverage, having already committed to the relationship. Often the only way to avoid unfavorable terms for that spouse is to call off the marriage.

Many prenups begin with a typical "off the shelf" agreement that is quite harsh. It provides that each party's past and future assets and income belong to that party, except for property intentionally held jointly. This type of prenup has no inheritance requirement if the marriage is intact when one partner dies. And often there is a waiver of alimony, no matter what the facts of the marriage are or what the needs of either party turn out to be at the time of a divorce.

But even prenups that aren't as severe have problems. For one, they often end up going beyond the issues the parties wish to address. If the parties want to isolate inheritance or premarital assets, why not just address that particular issue and leave the disposition of the rest of the couple's assets to be addressed by marital laws?

Those laws are intended to provide fair, sensible resolutions of financial issues in every type of situation that might develop over the course of a long marriage. For instance, laws that ensure a spouse has some share in a deceased partner's estate, even without the benefit of being mentioned in the will, uphold the concept of marriage as a partnership.

Protection of Another Kind

It's true that a prenup will allow couples to avoid the expense of litigation when a marriage ends. But what's more expensive: giving away \$4 million in assets that were rightfully yours as a marital partner or "expensive" litigation?

A prenup doesn't help many newlyweds plan for the future by providing certainty. How does a 25-year-old know what the future will bring?

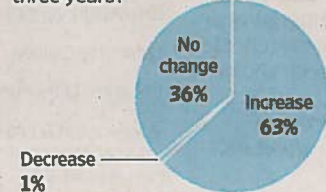
Married couples protect each other by being fair and generous in all ways, including financially. So for most couples, having a negotiation about withholding property isn't a very good way to begin a relationship that should be built on love, trust, mutual protection and generosity. You know that adage, "love is money"? It's true. You can express love by caring for someone financially.

Ms. Israel is an attorney, mediator and collaborative lawyer practicing in Brookline, Mass. She can be reached at reports@wsj.com.

Before the Altar...

Results from a 2013 survey of divorce attorneys show increasing interest in premarital agreements

Have you seen an increase in the number of prenuptial agreements during the past three years?



Source: American Academy of Matrimonial Lawyers

Which have you seen most commonly covered in prenuptial agreements during the past three years?

Protection of separate property	80%	Community property division	23%
Allimony/spousal maintenance	77%	Occupancy of the marital residence	18%
Division of property	72%	Counsel fees	15%
Protection of the increase of value in separate property	62%	Life Insurance	11%
Inheritance rights	39%	Occupancy of second homes	3%
		Health Insurance	2%

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THE READERS WEIGH IN | PRENUPTIAL AGREEMENTS

WSJ.com readers were evenly divided on whether prenuptial agreements should be a requirement. Below are edited excerpts of comments. You can still vote and share comments on blogs.wsj.com/totalreturn.

A prenuptial agreement indicates you don't really know or trust the person you are about to commit the rest of your life to.
Lexington, Ky.

I think everyone should do them. But I'm for less laws, especially in our personal lives.
Bellevue, Wash.

As a man going through a divorce and dealing with a foot-dragging ex-wife concerning assets and liabilities, I still say, "No!" A prenup just takes something out of a relationship before

it can even get going. I am an optimist. I feel that the woman I am going to marry will feel the same way as me. She will have similar, if not exactly the same, views concerning trusting me.
Durham, N.C.

Why bother getting married if you aren't willing to share everything?
Ashland, Ky.

My husband and I signed prenups before being married 28 years ago. We owned separate businesses prior to marriage. My husband also was a partner in real-estate ventures I had noth-

I Do and I Don't

Should prenuptial agreements be a requirement for couples? How WSJ.com readers responded to an online poll:



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ing to do with. Both of us wanted to protect our individual interests—not just the financial aspect, but the ability to make decisions independent of the spouse. The prenup allowed each of us to choose to stay married based on other benefits than "staying together for the money."
Connecticut

No. Marriage is trust; not a trust fund.
New York

It shouldn't be a requirement, but it's a best practice. I'm a financial adviser and divorces would be less costly and less painful for the family if prenups were in force. When I got married at 39 years old, I asked my husband to sign a prenup. It didn't put a damper on romance; to the contrary, it eliminated anxiety in the relationship!
San Diego

Requirement is probably too strong a word. Perhaps "strongly advised" would be better, especially if there is a difference in income and/or wealth (the two are not the same), there are special

assets held by one or both parties, or there are children from a prior marriage.
Chicago

Yes. Because in this serious conversation you learn and decide for real what your marriage really means.
Indianapolis

Every marriage has a prenuptial agreement that culminates in some way—usually the verbal wedding vows. By requiring the marriage agreement to be captured in writing, a couple has the opportunity to identify the issues that are important to them and to work through each of them to make sure they are on the same page.
Nashville