

When the "I wills" fail, prenups won't

By MARILYN SAMBRANO
SPECIAL WRITER

When it comes to marriage preparations, some couples record more than her waistline for a gown and his suit-coat size for a tuxedo. They deliberately measure each other's finances before taking any vows.

Because second and even third marriages are not uncommon these days, some couples — often at the behest of their families — sign prenuptial agreements that record each party's financial worth and to whom it goes to should they divorce.

According to attorney David McCleary, of Clarkston's McCleary and Associates, most couples don't bother to have them drawn up. "They're good for second marriages, when people have children from previous marriages, or when there's a great difference in the participants' ages and/or assets."

"I had a client who was some thirty years older than his fiancée," recalls McCleary. "His children were very concerned that their father's beloved wanted more than his companionship, and when he reluctantly asked her to enter into a prenuptial agreement with him, their feelings proved right: she left him. 'You don't know what it's like to be lonely,' that client told me."

But the story has a happy ending. He met someone else who said that she wasn't marrying him for his assets, but because she loved him. "Signing on the dotted line was easy for her to do," he says.

McCleary points out that a prenuptial agreement can be a great estate-planning device when used in conjunction with an estate plan. One must be prepared to be honest and expose all his and her assets because, in Michigan, these agreements are enforceable when properly drafted by an attorney or a CPA.

"If small, honest mistakes are made because a party neglected to include some item(s), they can be worked out upon one's death or divorce," says McCleary.

But it's the attorney's job to go through a complete checklist with his or her client for full financial exposure. The fees for these services vary, but usually start around \$1500.

Kevin Miller, a partner at Advocate Legal Services in Troy, says his firm has very few requests for prenuptial agreements. "People don't ask for them if they only want to protect their cars. While I think that wanting one often means that people value their possessions over their relationships, I can understand that they may be needed when, for instance, someone has a large inheritance."

"There are options to these agreements," says Miller. "Many things can be taken care of in a will, but if a client wants such an agreement, the costs vary with their complexity. I have a form that can be used to draw one up in an hour. Anything that nails down specifics, like a large amount of stock

or an insurance policy, must be brought in at the time that a prenuptial agreement is drawn up."

They're sometimes referred to as "anti-nuptial agreements." Although that sounds negative, attorney Harriet Rotter, of Franklin's Rotter and Pierce, P.C., believes that these agreements, when legally procured, are a good idea. By their very nature, they require that participants step back and take an unemotional look at all the bonds, including financial, that they're forming with another.

"Basically, prenuptial agreements have been around for a long time," says Rotter. Both parties must have their own lawyers work on their agreement, and young people taking their first marriage vows should consider having such a contract.

In case they eventually divorce, Rotter says that they have the agreement, which was arrived at during less chaotic times, to fall back on. With second marriages, the children from previous relationships won't have to worry about financial difficulties and disagreements.

The key to a prenuptial agreement is that most of the time they have a "shelf life." Should a couple remain married a long time, their agreement is erased due to the longevity of the parties' bond. And, Rotter suggests, very few spouses know everything about the other. By creating a prenuptial agreement, the financial state of both is clarified.

"They're becoming more common these days," says Rotter, "and they play an important role in several ways. The first is psychological, easing doubts for both parties. Their total disclosure is reassuring. Then they make couples look at what they're going to do in their marriage, such as are they going to share living expenses? Finally, divorce and death provisions are clarified."

Do you need a pre-nup?

It's a good idea if you:

- Own a business.
- Have significant assets.
- Have more money than your fiancé (typically twice as much is the rule).
- Have children or grandchildren from a previous marriage.
- Have a career or business that has the potential to be very successful.
- Own real estate.
- Have trust funds.
- Maintain a brokerage account.
- Will be supporting your spouse through school, especially professional graduate school.
- Are a partner in a business, medical practice or law firm.

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