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Why Almost Everyone Needs a Prenup

By Kimberly Palmer

Asking for a prenup—a legal agreement that specifies how couples will divide assets if they divorce—doesn't exactly sound like a romantic gesture. After all, couples marry for love, not money, so who needs to work out the nitty-gritty financial details of a break-up that the couple hopes will never happen?

Everyone does, insists Silvana Raso, matrimonial attorney with the Englewood Cliffs, N.J.-based law firm Schepisi & McLaughlin. "There's not a single person who couldn't benefit from a prenup, even if you're going into marriage with little assets," says Raso. "You might accumulate assets during the marriage, and even a young couple embarking on their own careers wants to make sure that what they acquire during marriage isn't just left up to a judge to divide," she adds.

Because state laws and judges vary, it can be impossible to predict how a court will decide to divide a couple's assets. "There are no two divorces that are alike," Raso says. Even student loan debts, which couples often assume to be individually-owned, can be considered joint by divorce courts. If one spouse had large medical school debts and her degree allowed the couple to earn a large salary and accumulate significant assets, a judge might decide that both spouses share the burden of the debt, for example. By specifying how debts, assets, and future earnings will be divided in a divorce, couples can take away some of the uncertainty that can cause extra stress, she adds.

Whether you're celebrating this Valentine's Day with your partner of many years or your fiancé, here are five reasons to take a closer look at prenups:

Talking about "what ifs" can shed light on your relationship.

Many couples today enter marriage on relatively equal terms, with both spouses working and building careers, says Raso. Then, if they have children, one spouse often scales back workforce ambitions to spend more time at home. "They put their career on the back burner, and that limits their earning power substantially," she says.

As a result, she always asks couples what they think about alimony in the event of a divorce. "People are often surprised to hear their partner's reaction. If their spouse doesn't want to pay alimony, that might convince you to keep working," she says.

You can create an agreement even post-marriage.

While post-nuptial agreements can be more difficult to enforce, they can be created when each spouse is bringing something to the table, a legal concept referred to as “bargained for exchange.” A spouse could agree to a post-nuptial agreement in exchange for allowing the other spouse to purchase another asset, for example. A post-nuptial agreement might make sense if one spouse is deciding to stay at home with children and wants to protect herself financially.

Prenups cost half as much as the average engagement ring.

A typical prenup costs around \$2,500, similar to the cost of hiring a lawyer to create an estate plan. While some websites offer do-it-yourself forms, Raso warns that those are almost tossed out by courts because of various legal requirements that need to be met. To create a prenup, each spouse needs his and her own lawyer, adds Raso, because having the same lawyer would create an ethical conflict that would invalidate the prenup. (By comparison, the average engagement ring costs about \$5,200, according to The Knot.)

Couples often make the mistake of waiting until the last minute (or delay indefinitely).

Raso says she often sees couples who wait until the last minute to create a prenup, which creates unnecessary pressure and stress. And, of course, some couples, even famous ones such as Katy Perry, neglect to create a prenup altogether. “No one can say ‘I definitely won’t get divorced,’” says Raso. She compares not having a prenup to not buying car insurance.

Community property states make prenups even more important.

Some states, including Texas and California, are known as community property states, which means couples’ assets are usually divided in half regardless of circumstances. That means couples who wouldn’t want an equal division need a prenup to prevent it.

Raso says prenups are like life insurance policies—no one likes thinking about either worst-case scenario, but having plans in place can ease the stress of a painful life event. Says Raso, “It’s not romantic, but it’s realistic.”