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The Basics

Say 'I do' with a contingency plan in hand

No, a prenuptial agreement about what happens if it doesn't work out isn't particularly romantic. Yes, it's a good idea, especially if you've been married before.

By [Terry Savage](#)



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They say that getting married for the second -- or third -- time is a triumph of hope over experience. But because nearly half of all marriages end in divorce, it makes sense to plan ahead the second time around. And even first marriages might benefit from a solid prenuptial discussion of how finances will be handled to make the marriage work -- or in case it doesn't work!



The key ingredient in that planning process is likely to be a prenuptial agreement. Writing one may not sound very romantic, but it is very smart. The best and most sensible agreements are completed when both parties are very much in love, not when they're considering divorce. If you're anticipating getting married -- or know someone who is -- why not send them the link to this article? It will certainly start a discussion!

Prenuptial agreements aren't just for the wealthy. Forget the stereotype of the wealthy, older man marrying a much younger wife. Even young couples who have already embarked on careers could benefit from a legal agreement about the financial consequences of divorce. Certainly, those embarking on a second or third marriage will want to provide for their children from previous marriages, as well as keeping premarital property separate.

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Keys to an agreement

Prenuptials aren't limited to financial issues, although finances generally are the critical issue. You could make a prenuptial agreement about almost any area of potential conflict -- during the marriage and in case the marriage fails. It's important to distinguish between a simple, personal agreement of how you're planning to handle money matters and other important issues (such as work and child-care priorities) and a true prenuptial agreement. The prenuptial is a written, legal and binding document.

There are two key ingredients to a valid, legal prenuptial agreement:

- Both parties must be represented by separate and independent legal

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counsel.

- Both parties must fully disclose all of their financial assets and liabilities. Failure to do so will almost always void an agreement.

Once again, throw out the stereotype of the dominating male forcing the young bride to sign on the dotted line just minutes before the ceremony. Not only might that be considered coercion, and thus invalidate the agreement, but these days prenuptials are arrived at through joint discussions handled by attorneys (and, sometimes, accountants if there's enough money involved) well in advance of any marriage ceremony. And your input is vital, so you need to discuss these issues with the person you're about to marry.

The purpose of a prenuptial agreement is to supersede, where possible, state laws that apply to dissolutions of marital property. And in states where judges are given broad discretion over division of property and future support, a valid prenuptial agreement limits a judge's ability to dictate property settlement terms. So you do need an attorney trained in matrimonial law because state laws vary, and because your estate plans will also have to be coordinated with your prenuptial agreement.

Issues to address

Here are a few financial issues to consider dealing with in your prenuptial agreement, depending on your circumstances and state of residence.

Premarital assets. If you agree that any assets owned before marriage will be kept separate, you might want to set up separate, revocable living trusts and transfer title to the assets into the name of your trust.

Marital assets. You'll have to decide how to deal with assets acquired by joint purchase during your marriage and any assets and earnings you acquire separately during your marriage. In many states, but not all, wealth accumulated after marriage will become community property, or at least marital property. You may want to discuss how to divide marital property in the event of a divorce, or make an advance agreement on ownership of assets acquired during the marriage. (True community property states that assume property acquired after the marriage is equally owned by both spouses are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Washington, Texas and Wisconsin, as well as the territory of Puerto Rico.)

Retirement assets. Although retirement plans are considered separate property, in many states a non-working spouse is entitled to a share of the working spouse's retirement assets. You'll definitely want to see how the law applies in your situation.

Inheritances. If inherited property is kept separate from marital property, most

courts do not consider it part of the marital estate in case of a divorce. But if you take a portion of your inheritance and use it for a down payment on a house owned jointly, you'll convert this portion of your inheritance into marital property. In any case, if you're expecting to inherit money, your prenuptial should spell out your intentions to keep the assets separate.

Financial lifestyle and support. Your prenuptial can outline your intentions for contributing to the financial lifestyle of the marriage, during the marriage. For example, non-financial contributions such as child-rearing should be taken into consideration. One spouse may limit career prospects to build the family lifestyle. Courts take these contributions into consideration, and so should your prenuptial agreement.

Obviously, circumstances may change during your marriage, and a good marriage will be flexible. But a bad marriage will break -- and that's why most prenuptials outline a support agreement between the spouses in case of divorce. For example, each spouse may agree to limit ongoing support to three or four years. Or they could agree not to seek support from each other at all, in exchange for an even division of marital property.

If you expect -- or simply want -- to have children, your agreement may contain not only references to child support, education and other expenses, but may extend to social issues such as religious upbringing and type of schools. And in cases of second marriages with children, the agreement should take into account the child-support arrangements from the previous divorce.

Terms. Many prenuptial agreements for support and property division in the event of divorce include a scaled agreement. That is, if the marriage lasts only one or two years, the couple could agree to no support. If a marriage lasts for a longer period, then either larger support or a lump-sum payment could be agreed upon. Or the agreement might "vest" like a pension plan -- with a portion of the payout dependent on the longevity of the marriage. And the couple may agree to review the terms of their prenuptial at a certain date in the future, or the agreement may "sunset" after a specific number of years.

Life insurance. Financial circumstances can change during the course of a marriage. Many prenuptials call for both parties to maintain life insurance -- with each spouse owning the policy on the other's life. This won't pay off in the case of a divorce, but as long as each has an "insurable interest" in the other's future, the owner can continue paying premiums and maintain the coverage.

Estate plans. Prenuptials cover not only financial considerations in case of a divorce, but agreement on what happens if either of the couple dies. So the provisions of a prenuptial must be incorporated into each spouse's estate plan. For example, as part of a prenuptial, the spouse might receive lifetime use of a

residence, which will then become an asset of a child from the previous marriage. Although different attorneys may draw the estate plans, they'll rely on the prenuptial to outline certain terms. And then each spouse's attorney should review the separate estate plans for compliance.

A final reminder: If you're thinking that a prenuptial agreement is about to take all the romance out of your marriage plans, think again. You're about to spend a lot of time and money making arrangements for the ceremony, the party, the flowers and wedding dress. Those aren't very romantic subjects, either -- but they've become part of the "tradition" of having a wedding. Now, it's time to start your own new tradition of planning for a financially successful marriage through a mutual prenuptial agreement that demonstrates your love, commitment -- and practicality.

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