

How to Cover Your Assets with a Prenup

The Power Moves | 7 March, 2020 | by Lucio Buffalmano

Note from Lucio:

We mentioned on this website that [money is power](#) -or, at least, an important element in of an empowered life-.

And in “[the fundamental strategies of power](#)“, we mentioned that win-win collaborations in long-term relationships is power, while wars, especially protracted wars without clear winners, sap your power. This is especially true with intimate relationships. **With intimate relationships the benefits of collaboration are huge, but the costs of litigation can be even bigger** -both financially, emotionally, and time-wise-.

It’s within this framework that a prenuptial agreement can become an important strategic tool to protect your future well-being.

Specifically, **a prenup can be an important tool of your loss-mitigation strategy**, and help cap your downsides in case things go wrong. A well-thought prenup can not only limit your financial losses, but also save you time and resources: life is too short to for endless and bitter legal wars.

Personally, I don’t have much knowledge in legal matters.

But Veronica Baxter does have.

So when she reached out to write a post on how the law can help empower people, I immediately proposed her to share her knowledge on prenuptial agreement.

And this is how this post came into being.

You just got engaged and you are planning your wedding – congratulations!

But I hope you have already discussed a prenuptial agreement?

Of course you, your intended, and your families are busy discussing and deciding on the date, venue, guest list, wedding party, flowers, music, and more... but what you and your fiance really need to do prior to tying the knot is sit down and decide if the individual assets or debts you each bring to the marriage require a prenuptial agreement, or “prenup.”

This is certainly not the most romantic conversation you two will have prior to your ceremony, but it is a necessary one nonetheless. This article will give you a comprehensive starting point for your full and frank discussion regarding finances and asset protection and whether you need or want a prenup. Deal with these issues upfront – while you may never need to enforce the prenup if, at some point you do, you both will be glad you have a prenup.

Contents

- [What is a Prenup?](#)
- [Who Needs a Prenup?](#)
- [How Do I Make a Prenup?](#)
- [What Happens if I Don’t Get a Prenup?](#)
- [What if You Just Live Together?](#)

What is a Prenup?

A prenup, short for “prenuptial agreement,” is a contract created by a couple prior to entering into marriage, domestic partnership, or civil union that lists the properties each party brings to the marriage and what property rights each has during the marriage and should the marriage dissolve. It may also list the parties’ joint or individual debts.

A prenup may be called alternately an “antenuptial agreement,” a “premarital agreement,” or a “pre-partnership agreement” according to the state in which you live.

Who Needs a Prenup?

While historically prenups were used by a wealthy spouse to preserve his or her premarital assets in case of divorce, today many couples of more modest means use prenups to organize their separate and marital finances in the following ways, among others:

1. Preserving the Inheritance of Children of a Prior Marriage

In most states, without a prenup, a surviving spouse is likely entitled to the entirety of the decedent’s estate, leaving the children of a prior marriage with nothing. A parent can specify in a prenup what assets will pass to his or her children, and when his or her fiancée signs off on that the prenup becomes a legally binding contract that the children can enforce.

2. Setting Forth the Financial Rights and Responsibilities of Both Parties During the Marriage

Prenups are as varied as the people making them. The parties can establish upfront who will be responsible for paying specified joint bills or debts during their marriage.

Setting forth the financial rights will help you cover against, for example:

- Men or women who live above their means during courtship, lying about their jobs, income, or level of debt;
- Men or women who play a “bait and switch game”, being cooperative and financially sound during courtship, but then turning uncooperative takers once married;
- Discourage potential gold-diggers, either male or female, who want to marry up and then divorce as soon as they can secure a strong divorce settlement (smash and grab weddings, see [Talulah Riley and Elon Musk](#))

[Talula Riley received 16 million cash, plus assets. Not much for Musk, but enough to attract a horde of potential gold-diggers](#)

3. Protecting One Spouse from Responsibility for the Debts of the Other

If one spouse comes to the marriage with individual debt such as student loan debt, a mortgage, or a car loan or lease, the couple can use a prenup to establish individual responsibility and liability for those debts.

In some states, a couple can use a prenup to establish individual liability for future medical debt.

4. Avoiding Arguments in Case of Divorce

This is the classic reason for entering into a prenup.

Imagine if love ever after is not in fact love ever after. How does a prenup help?

With a prenup, you can agree in advance what your spouse will get in case of divorce.

This will avoid nasty fighting and legal expenses, and it can protect you against your spouse seeking to appropriate 50% of your total net worth in some states.

5. You May Have to Pay Support Despite a Prenup

Be advised that many states do not allow a spouse to waive his or her right to alimony or spousal support, so that term will be unenforceable.

In this case, the remaining terms of the prenup may be enforceable depending upon how fair it is and whether it meets the other requirements for enforceability in your state.

In most states, the standard for spousal support is to maintain the marital lifestyle. The length of the marriage and the employability of the dependent spouse may also be factors in determining the amount of alimony.

How Do I Make a Prenup?

The requirements for a valid prenup vary by state. As a general rule, a prenup must be in writing and signed by both parties to be valid and enforceable and must be freely entered into by both parties. Many states require that the prenup document be notarized.

Every state allows prenups, but **prenups must be fair and meet any other legal requirements set forth by the state in which you live**. Historically, courts have carefully scrutinized prenups and have frequently held that they are invalid, as prenups were most commonly used to unfairly strip a less-wealthy spouse of rights to the other spouse's property should the marriage end.

Nowadays, with divorce at an all-time high and most women working and owning property individually, **prenups are viewed as an estate-planning tool between equal partners**.

A prenuptial agreement can address just about any marital issue.

Take the case of Michael Douglas and Catherine Zeta-Jones. Their prenup sets forth a sum Catherine will receive if Michael is caught cheating.

[Douglas and Zeta-Jones drafted in their prenup what will happen if Douglas were caught cheating. You can plan almost anything in a prenup](#)

It is important that even if you both agree on the terms of the prenup, you each bring it to separate attorneys for review, **and it's important that you insist your partner also brings the prenup to an attorney**.

This will tell the courts that, in the event one of you seeks to enforce the terms of the prenup, you each had the advice of legal counsel and entered into the agreement freely, knowing the consequences.

What Happens if I Don't Get a Prenup?

If you don't enter into a prenup, in the case of divorce or the death of one of you your property will be divided according to the law in your state. This means that **without a prenup you give up control of what happens to your property and/or debts**.

State law will dictate what happens to property acquired during the marriage (called marital property or community property in some states) and may also dictate what happens to individual property acquired prior to the marriage.

Without a prenup, the courts have the authority to make financial and property division decisions for you both in the case of divorce, if you cannot agree among yourselves. Think about it – chances are that one or both of you will feel some resentment or animosity caused by the end of the marriage and that those emotions will interfere with your ability to agree on the division of property or joint debts.

Take the case of *Fresier* star Kelsey Grammer. He and ex-wife Camille Donatucci did not sign a prenup, and now Camille is likely to receive \$30 million of Grammer's \$84 million fortune.

[Marrying without a prenup cost Grammer \\$30 million](#)

Finally, without a prenup or will, your state's laws of intestacy will dictate what happens to the individual property upon death.

What if You Just Live Together?

Living together is a popular alternative to traditional marriage and a prenup can help you in this situation too, by setting forth each person's financial rights and responsibilities upfront.

If you live together without marrying, most states would not award the dependent partner any type of spousal support should the relationship end. That can make non-marrying a rational choice for people who are particularly afraid of the fallouts of a divorce -see "[Men on Strike](#)".

However, things change if you have children with your live-in partner, and **if you have children, you will be responsible for child support.**

That's why a prenup is a good idea even if you are simply living together.

If you are in a relationship, married or not, and you want or need to organize your individual or marital assets, debts, or financial responsibilities, a prenup is for you.

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