



Prenuptial Agreement – 5 Required Elements

Two of my good friends have gotten divorced in the past year. One breakup went relatively smoothly and the other was more of a “scorched earth” situation. Neither of these friends had prenuptial agreements, which would have made the process simpler and less painful for all parties involved.

I was heartened to share with these friends the stories of clients of mine who found their true love the second time around. A lot of people are reluctant to get remarried later in life due to the complexities of mixing finances, especially when the two parties have significantly different levels of assets and/or kids (future beneficiaries) from their previous marriages. One possible solution is a prenuptial agreement.

Nothing kills romance faster than the words “prenuptial agreement,” and some people believe they make an eventual divorce more likely. However, with more than 40% of first marriages, 60% of second marriages, and 70% of third marriages ending in divorce, many people are willing to brave the prenup conversation.

Decide who gets which assets in the event of divorce:

A prenuptial agreement specifies who gets what in terms of assets and spousal support in the event of divorce. Some prenups also cover what happens in the event of death of one spouse. They may also specify that the agreement can be invalidated in the case of adultery, although some states (e.g., California) do not allow that provision. Postnuptial

agreements are like prenuptial agreements, except that they are entered into after a couple is married.

Do not end up like Steven Spielberg:

Keep in mind that just because you have a prenup does not mean it will be enforceable. You don't want to end up like Steven Spielberg. His prenup with Amy Irving was invalidated because she did not have a lawyer to represent her...and the agreement was written on the back of a napkin. She was awarded \$100 million when their four-year marriage ended.

A prenup needs these five elements if you want it to hold up:

1. Must be in writing
2. Entered into voluntarily
3. Full and/or fair disclosure at the time of execution
4. Cannot be extremely unjust ("[unconscionable](#)")
5. Signed by both parties (not their attorneys) before a notary public

Prenuptial agreements are not allowed to regulate issues relating to the children of the marriage, such as custody and access issues. The reason for this is matters involving children must be decided in the children's best interests, which cannot typically be determined in advance.

Prenups often take months to negotiate, so I would recommend doing it well in advance (i.e., before the wedding invitations go out). Once the agreement is presented for review, the parties must wait seven days before they sign it. A sunset provision may be inserted into a prenuptial agreement, specifying that after a certain amount of time, the agreement will expire or terms of the agreement change. Anyone remember this story: [With eye on the bottom line of his prenuptial deal, Donald Trump says goodbye to Marla?](#)

For all of us who do not have a prenup...that is why we call marriage a "[leap of faith](#)." Have a great week and email back with thoughts or comments.

P.S. Please do not construe this article as legal advice. I am not an attorney. If you need a prenuptial agreement or any other legal help you should hire an attorney.

-Jeremy Kisner, Senior Wealth Advisor