

Are Prenuptial Agreements Worth The Possibility Of Jeopardizing Your Upcoming Nuptials?

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Asking your fiancé to sign a [prenuptial agreement](#) will undoubtedly place a damper on your relationship with your fiancé. In fact, it could jeopardize your upcoming nuptials. As a result, you have to ask yourself, is insisting that your fiancé enter into a prenuptial agreement worth the possibility of losing him or her? The answer lies in determining whether a prenuptial agreement will protect you in the event your marriage ends in divorce.

In general, [prenuptial agreements](#) are designed to protect the assets that you own at the time of your marriage, as well as the income generated and/or the appreciation on these assets. Therefore, if you are entering into a marriage with nominal or no assets, then it is usually not worth the possibility of jeopardizing your upcoming nuptials since you have nothing to protect.

Even if you have assets prior to getting marriage, you may not need a prenuptial agreement. For example, if you have a pre-marital mutual fund account that is not substantial in value that you want to protect, you probably do not need a prenuptial agreement provided:

- (1) you have proof that the account was acquired prior to your marriage;
- (2) you always keep the account in your separate name;
- (3) you do not commingle the account with any marital funds;
- (4) your spouse does not have any control or management over the investments; and
- (5) you can prove that the above conditions have been met at the time you are getting divorced.

Therefore, when is having a prenuptial agreement worth the possibility of jeopardizing your upcoming nuptials? It is worth the risk in cases where

- (1) a party has substantial assets that he or she wants to protect;
- (2) there is a substantial disparity in the parties' assets; or
- (3) when a party has a business that he or she started prior to the marriage or intends to start after the marriage with pre-marital funds.

If you own a business or you have an interest in a business that you acquired prior to your marriage and you intend to work at this business during your marriage, then having a prenuptial agreement is usually worth the possibility of jeopardizing your upcoming nuptials. Although the value of your business at the time of your marriage is generally not subject to division at the time of your divorce, any increase in the value of your business during your marriage may be subject to division. For example, if your business was worth \$100,000 at the time of our marriage and it is worth \$300,000 at the time of your divorce, your spouse can claim an interest in the increase in its value (i.e. \$200,000).

The only way you can protect this increase in value is to have a prenuptial agreement wherein your fiancé waives his or her interest in your business and any increase in its value. The same is true if you are going to start a business with pre-marital funds after your marriage. You should have a prenuptial agreement to protect the value of your business and the increase in its value during your marriage.

However, before entering into any prenuptial agreement it is critical that you review the prenuptial agreement and/or have it drafted by an attorney. There are specific disclosures that **must** be made and other requirements that are critical in succeeding in having the prenuptial agreement enforced at the time of a divorce.