

# “Happy Valentine’s Day! Will You Marry Me? And By The Way, Here Is A Prenuptial Agreement To Sign.” Isn’t That Romantic?

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February 14, 2017 | by Patricia M. Barbarito, Gary Botwinick

‘Tis the season. I’m not talking about Spring Training. We see it in our practice every year. We call it “Prenup Season.”

In anticipation of Valentine’s Day and the season of romance and marriage proposals, we see a significant spike in the number of phone calls we receive from brides and grooms looking for advice. Everyone has read articles or seen news stories about this celebrity or that professional athlete and whether he or she will sign a prenup, or whether the prenup will hold up in court if the celebrity is getting divorced. But prenups aren’t just for celebrities and they are certainly not the exclusive province of the jet-set. Ordinary people can, and often should, achieve significant benefits from a well-crafted and tailored prenuptial agreement. Prenuptial agreements are not appropriate in every marriage, but there are many situations where such an agreement can provide extraordinary protection.

Keep in mind that all marriages come to an end, and they do so in one of two ways – either by divorce or death. So while most people think that prenups only address issues of divorce, the fact is that all prenups should address the death of a spouse as well. This means that the agreement must spell out the rights of each spouse upon the death of the other as well as the terms that apply in the event of a divorce. The investment in a well-drafted prenuptial agreement can and does save significant time and money in legal fees in the event of divorce or a dispute upon a spouse’s death.

Prenuptial agreements are most common in second marriages, especially when the parties have children from prior marriages. It is reasonable for each party to want to protect his or her estate for the benefit of his or her own children. The law provides certain inheritance rights to a surviving spouse. But with a prenup, these rights could be either waived or compromised. This means that the parties have the ability to ensure that an inheritance is preserved for the children of a first marriage. The agreement

can be carefully tailored to protect the surviving spouse's rights to the use of inherited assets or income from those assets, while also guaranteeing that the children of the first marriage will ultimately benefit after the surviving spouses' death. This is a rather common element of a prenup.

Prenups are also common in first marriages, where one party comes to the marriage with either significant assets or a successful business. While an asset acquired before marriage is not subject to a claim by the other spouse during a divorce, in the absence of a waiver in a prenup, any appreciation in value may be subject to equitable distribution. Likewise, if one party has an ownership interest in a business, without a waiver in a prenup, any increase in the value of the business could be subject to division in a divorce.

Of course, one of the biggest concerns in a divorce is the risk of a significant alimony award to be paid by the main breadwinner. In a prenup, the parties are free to negotiate a waiver of alimony or even agree upon a predetermined amount of alimony for a specified term.

Timing is important. Prenups take time to negotiate. For that reason, we always counsel our clients to get started right away. Negotiating a prenup can sometimes be difficult, but in the long run it is a worthwhile investment.

Getting married is stressful enough. Prenups certainly can add to the tensions. But if both the bride and groom consider the benefits that a prenup can provide, and try to understand why the other party may wish to have this agreement, the negotiations can be smooth, and the happy couple can be sailing off to a very enjoyable wedding and marriage.