

More Than The Average Wedding Planning

Unfortunately, fifty one percent of all marriages end in divorce. That figure is astonishing and seems to point to the conclusion that the odds are against us, at least when it comes to statistics. But what does that mean for those of us that are still single but considering marriage? Simply hope that you beat the odds? Perhaps you will, but why not prepare, prepare, prepare, and then hope for the best. If this were a business decision, would you approach it differently? If you were advising a friend or family member, would you advise them differently? With communication and compromise, and a great deal of effort, you may end up in a successful marriage, but why not be crystal clear from the start? Accept it or not, one of the best means of preparation is to go into the marriage with a clear-cut understanding of how things should be handled in the unfortunate event that things don't work out: Put another way, have a Pre-nuptial Agreement!

Unfortunately, when people hear the word pre-nuptial, they automatically think equate it with a bad word, reasoning: "Why would I do a pre-nuptial agreement when I know our marriage will last forever, and doesn't that show that I'm considering the possibility of a divorce?" The answer is simple: **No**. It just means that you want to be prepared for any possibility, and to do it at a time when you can discuss it over drinks with your loved one as opposed to in the battle field with your ex.

There are four ways to address the distribution of assets and debts in a marriage:

1. A pre-nuptial agreement by the parties,
2. A post-nuptial agreements by the parties,
3. A marital settlement agreement made during a divorce action, or while contemplating one, and
4. A distribution of the marital assets and debts solely at the discretion of the Court.

The pre-nuptial agreement and post-nuptial agreement, are the only ones that avoid the significant costs (emotional and financial) associated with a litigating the issue of equitable distribution. While a marital settlement agreement may help you maintain some control, as opposed to surrendering it all to the Courts, the chances of reaching a settlement while in the midst of divorce proceedings is much slimmer than reaching an agreement while in love. The chances drop even more depending on the amount of money at issue. In addition, you will usually have mediators as well as attorneys involved with any divorce-related settlement, and will have to pay considerable fees to all for their professional services. So what then is the difference between a pre-nuptial and a post-nuptial from a legal perspective?

Simply put, with proper disclosures, the Court is not likely to scrutinize a pre-nuptial agreement, but to instead abide by the agreement of the parties as to how to distribute their marital and non marital assets. The Court takes into consideration that the agreement

does not limit personal rights that would have been acquired by the parties by the fact that they have gotten married. The same is not the case when we consider the post-nuptial agreements. Though regularly followed by the Courts, post-nuptial agreements are scrutinized much more carefully due to the fact that, at the time this type of agreement was entered into, the marriage has already taken place and the parties have certain rights in relation to property purchases and/or debts incurred during the marriage.

Given the human factor associated with this issue, an example probably best highlights the appropriateness of advance planning: In one specific divorce action where I represented the husband, we ended up in an eight hour mediation, where heated arguments made it impossible for both spouses to even sit down in the same room with one another. Even against those odds, however, the mediator, the parties, and their attorneys were able to reach an agreement as to all of the debts, the issues relating to the children, all of the real property distribution, and most of the personal property distribution. The mediation ended up a failure, however, because of the parties' inability to agree as to the distribution of a guitar purchased for their five year old son in a discount department store. Needless to say the parties still had to pay for the mediation at the mediator's hourly rate, as well as their individual attorneys at their hourly rates. We ended up then going to trial, which cost a significant amount more, and with the additional money they spent, everyone could have easily bought twenty of those guitars!

Divorce experts have noticed a new phenomenon occurring in recent times: specifically, some couples see themselves in a horrible situation in which, even after they have decided to divorce, they are forced to stay living under the same roof with their spouse as a roommate. This occurs mainly because of financial factors. The prenuptial agreement, seen in the past and even possibly today by some, as the evil little crack that will split apart a happy marriage does not exist. A prenuptial is not a unilaterally established document, but is instead an agreement that affords both partners ample opportunity to negotiate an outcome before it becomes final. Would you enter into any type of professional arrangement without an agreement sufficiently detailing what happens if the relationship fails? Would you advise a family member to do so? Prepare, prepare, prepare, and create a pre-nup is the best legal advice that can be passed along to a happy, new couple planning for their life in all other areas. Hopefully, the agreement will end up in the closet, never to be looked at again. But mark my words, if you ever do need it, you'll be thankful it's there.

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