



By Stacy D. Phillips

# Trial & Error

**What's ours is ours...**

**but what's mine should always be mine!**

## prenuptial agreements

One of the most difficult aspects facing couples preparing for their weddings — and for their lives together — is handling the pragmatic side of the union. Handling business details is not romantic, but it is absolutely necessary if you're the person with assets and/or worth. Moreover, it may be a necessity that has great rewards if you are the person without assets and/or worth.

If you have real estate, business assets, or valuables such as art and jewelry, you'd be smart to prepare for the worst-case scenario. If you're likely to earn a high income after you marry (from an invention, business venture, major contract), that's another reason to consider a prenuptial agreement.

So, then, you've got to cut a deal and a prenuptial agreement is precisely that—a business deal.

If you're the partner with nothing to lose—literally—should the union dissolve, most people say you don't need one. I disagree. If you make a great deal in a prenuptial, you can get far more in a divorce than you would otherwise. There isn't a better time to make a deal than when romance is in the air, if you're the recipient spouse.

A prenuptial that clearly and precisely spells out the terms of who gets what if the marriage dissolves is better for both parties. Many times my clients agonize over having been too much in love to see blind spots. They never considered they might divorce and didn't handle the business side of their union. Often when a marriage breaks up (and more than

half do), people spend time engaged in legal battles over who gets what. Dragging out the divorce, fighting over "things," makes the ordeal much more distressing. Who needs that?

How do you determine whether you're a candidate for a prenuptial agreement? The following reasons are valid for having your family law attorney assist you in drafting one:

1. If you have children from a prior marriage, you probably don't want your spouse ending up with what rightfully belongs to your children.
2. If you were previously divorced and put in a situation of having to relinquish assets you brought into that marriage—you don't want to repeat the same mistake twice!
3. If you currently own property,

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stocks, bonds, jewelry, furnishings, works of art—anything you consider meaningful and valuable.

4. If you could earn royalties or residuals from your occupation during your marriage. Example: if you're an aspiring professional baseball player or a songwriter. Down the line, you might become wealthy, and if you haven't spelled out the terms of your eventual success, you may be forced to relinquish half of those earnings!

You might agree all these reasons are good for entering into a prenuptial agreement, but how do you approach your intended with such a request, and when? I believe it's all in the delivery.

The following are my suggestions:

1. Pick a time which calls for a levelheaded discussion. While you're planning the various business aspects of the wedding, bring up the need for a prenuptial. It may just seem like one more practical detail to take care of.

2. When you start talking marriage—start talking prenuptial. Don't wait until the last minute to drop this request on your intended. It could break up the relationship or allow your spouse to claim the agreement was signed under duress.

3. Be up front and honest with your partner as to why you want a prenuptial. For instance: maybe you made the mistake of not having one in a prior marriage and suffered miserably or perhaps it's a matter of peace of mind. Whatever the reason, discuss it openly and honestly. Your relationship should be built on trust.

4. Don't have your attorney draft an agreement you slide across the table during a romantic dinner. Discuss what should go into your agreement with your partner. If both partners participate in negotiating the document, it may feel less threatening. The last thing you want to create is suspicion or show a lack of sensitivity.

When you're thinking prenuptial, think of the adage: "Better to be safe than sorry." Should you be faced with a divorce, you want as much peace of mind and security as you can get at such a difficult time. **W**

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