

Yours—Mine—Ours

The Latest Scoop On

Prenuptial Agreements

BY STACY D. PHILLIPS

One of my colleagues who practices in the same area of law says, "If you don't have a prenuptial agreement, don't see a lawyer—see a psychiatrist." What I say is: see a California Supreme Court Judge because judges are deciding the validity and future of prenuptial agreements—a future that could dramatically change as soon as this summer.

Why? Two recent cases, the first being *Pendleton vs. Fireman* (Fireman owns the Pleasure Chest) case, which tackles the issue of the enforceability of a "waiver" of spousal support in a prenuptial agreement. The *Barry Bonds* case addresses issues of "duress" in a prenuptial agreement (where one party signs without representation by an attorney). These cases have created controversy, confusion and, most of all, lack of clarity—according to the courts.

If you are entering into a prenuptial agreement, wait. That's right—postpone the wedding. If you have already signed one, stay abreast of daily

Supreme Court rulings; they just may decide your entire future.

A prenuptial agreement is a contract like any other. But unlike other binding agreements you sign, it's hard to be as objective and level headed when you are in a romantic state of mind. So before you sign—make absolutely certain you can live with the terms of the contract, in the event the day comes when you and the person you signed the agreement with no longer live together. It is important to think your decisions through clearly because your prenuptial agreement—if the Supreme Court allows—could be the most important agreement you ever sign.

Q. I'm 32 years old and single with an eight-year old daughter. The man I am about to marry is wealthy and insists we sign a prenuptial agreement. Are there specifics I should ask for even though I don't own property or financial assets?

A. A prenuptial agreement is an opportunity to protect yourself financially, if your new marriage does not work out. The specifics you need to consider should include terms that provide for a sizeable settlement or protection by way of an estate plan in the event of his death. You may not always receive spousal support in a marital settlement agreement, and unless you have children with your new spouse, or he adopts your daughter, you won't receive any child support.

A prenuptial agreement for someone in your position is an opportunity to make a sound business deal—a deal that is far better than what any court guidelines would offer. Bottom line: You want peace of mind and to be left financially solvent if your marriage should not last or something happens to your spouse.

Q. I'm a 48-year-old male getting married for the third time. The woman I am about to marry and I both feel a prenuptial agreement is important, but paying an attorney appears to be an expense I do not need. Is there any reason I can't rely on her attorney to advise us both?

A. I'm a firm believer that prenuptial agreements should be treated like any other contract. As such, any party signing a contract should be independently represented—each person should have his or her sole advocate, one's own attorney—in order to circumvent a lot of confusion in the event of a divorce and to make certain each party is being treated fairly and ultimately signing a viable document.

However, I also believe that a prenuptial agreement should not cause duress—that no one feel forced to sign one or sign one they don't feel entirely comfortable with. These agreements should also provide full disclosure of all assets and liabilities and there should never be even a hint of fraud. I also feel that each agreement should be fully and thoroughly explained and that each person should have plenty of time to think through the terms of the agreement. All this should be done well in advance of the wedding date. So my advice to you: Get advice from a competent attorney and be completely honest and up front. Do not be afraid to have the agreement list all specifics that are important to you.

Stacy D. Phillips is a founding partner of Mannis & Phillips, LLP. An experienced litigator for 15 years, she specializes in family law.

PHILLIPS, LERNER & LAUZON, L.L.P.
ATTORNEYS AT LAW
2029 CENTURY PARK EAST
SUITE 1200
LOS ANGELES, CALIFORNIA 90067
O: 310 277-1117
FAX: 310 286-9182 AND 310 277-0071



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