How To Write a Prenuptial Agreement: Checklist

Over the past few years, my law and mediation practice has seen a significant increase in requests for prenuptial agreements. A recent New York Times article The Rise of the Millennial Prenup cites the following contributing factors for the increase: millennials are marrying later, they are bringing more assets to the marriage and more women are in the workforce.



According to an AAML survey (American Academy of Matrimonial Lawyers http://aaml.org/about-the-academy/press/press-releases/prenuptial-agreements-rise-finds-survey), 51% of divorce attorneys are seeing prenuptial agreements on the rise in the millennial generation, with the most cited issues:

- 78% protection of separate property
- 74% alimony/spousal maintenance
- 68% division of property
- 64% protection of the increase of value of separate property
- 42% inheritance rights

Prenuptial Agreement Checklist

- **Let Your Fiance/Partner Know You Want a Prenup** Bring up the subject as soon as possible with your fiance or partner. If you haven't talked about it before the engagement, I suggest raising the topic at least 6 months before the wedding date. Discussing this topic before the wedding plans are already in full swing helps to ensure that the conversation will be less emotional and more practical.
- **Contact An Attorney As Soon As You've Made the Decision to Have a Prenup** I have seen many cases in which the partners talked for months about a prenup but neglect to get the legal process underway until a couple of months

(or even weeks!) prior to the wedding date. This is an important legal contract that will affect one of the most important emotional and financial relationships you and your fiance will ever have. Give yourselves adequate time to consider what you each need this agreement to provide, and consult with an attorney about your rights and obligations.

- **Be Involved in the Negotiations** Traditional divorce attorneys may view the prenup process as a battle in which your fiance is the enemy. They may even suggest that you don't speak to your fiance about it. I never understood this logic. If you want a healthy marriage built on respect and understanding, then negotiating a prenuptial agreement should be an opportunity for you and your fiance, not your lawyers, to talk about your future together. For this reason, I find that using the mediation process or engaging collaborative lawyers to help you negotiate the terms is a wonderful way to help you have respectful conversations that will lead to finding common ground.

- **Make the Agreement as Simple as Possible** It's common to want to address all the "What Ifs" that can happen in your marriage as you try to protect assets and the amount of spousal support that will be paid if the marriage ends. But don't make the prenup so complicated that is requires multiple footnotes providing examples of the formulas you've come up with. Your attorney will be ready and able to suggest ways to address your concerns in the simplest way possible.

- **Your Prenup is YOUR Agreement, About Your Marriage and Your Life Together** You will receive well-intentioned advice from friends, family and coworkers who have "been there" and "done that." They may mean well, but your prenup is about you and your fiance, not about the concerns of your friends and family.

- **Plan Your Marital Property** Under New York law, marital property is all property acquired during the marriage. However, in a prenuptial agreement, you have the freedom to define marital property differently from what the law presumes.

- **Post-Marital Debt** What happens in the case the other partner acquires significant debt after the marriage? Who is legally liable for the debt?

- **Impact of Children** Will one or both partners continue to work in the event you have children? Are there stepchildren who need to be provided for?

- **Spousal Maintenance** Spousal Maintenance (Alimony) is what one partner is legally required to pay to the other partner during a legal separation or after a divorce. New York has guidelines setting amounts and length of time for maintenance after a divorce. Many couples use prenuptial agreements to state-specific circumstances under which spousal maintenance will be paid, or waive it altogether.

- **What Happens in the Event of Your Spouse's Death?** Just as couples who are planning their wedding are hesitant to think about for their divorce, they are also hesitant plan for their spouse's death. But a prenuptial agreement is an excellent tool that can provide long-term security for the surviving spouse.

- **How Long is the Prenup In Affect?** Do the prenup terms last the life of the legal marriage, or do they expire after a set time period such as three or five years? Perhaps certain rights only come into being after the marriage has passed a certain mark. We call these sunset or sunrise clauses.

A prenuptial agreement can help you and your fiancé avoid having extensive arguments, or even worse, having a judge make financial and business decisions for you and your family. A qualified attorney will go through all the issues and ask all the questions that you might not ask yourself (or your future spouse) so that you can make sure the prenup protects both of you and can help you deal with uncomfortable topics. And it's this type of conversation that ends up being great practice for what will hopefully be a long and happy marriage.

- Contact Andrea Vacca: info@vaccalaw.com
- Learn More: https://www.vaccalaw.com/how-millennials-are-making-prenups-the-norm-prenuptial-agreement-checklist