

Early Decision

When is it smart to have a prenup?

BY LARRY HANCE

The idea of a prenuptial agreement is not particularly romantic. There's a reason no mood-lit prenup signing appears before the finale in *The Bachelor*. Yet in the real world, prenuptial agreements, at times, are necessary—or at least, advisable. So when is a prenup wise to consider?

In Texas, whatever money made *during the marriage*, regardless of “breadwinner” status, is considered community property. Should a divorce occur, in the absence of a prenuptial agreement, assets accrued during the marriage are split 50-50, or sometimes a different percentage. The prenup, then, is designed to protect what a person

brings *to the marriage*: any inheritance, property, savings, etc. In assessing whether a prenuptial agreement is needed, the person marrying should ask him or herself several financial questions and be honest about the answers:

- *Do I bring significant assets to the marriage by way of inheritance or previous earnings that I feel need to be protected?* (Making a list of assets and debts can help in this process.)
- *Do I, or my future spouse, have children from a previous marriage or relationship who may become concerned in the future about their parent's assets?*

A prenup may seem on its face to protect only the “monied” spouse, but this is untrue: done correctly, both parties retain an attorney to generate and draft the document, and both are legally required to list all assets and debts they have accrued before entering the marriage. When both parties have an advocate looking out for their individual interests, a prenuptial agreement can be beneficial for everyone, providing a safety net should divorce at some point become the reality.

Some worry that bringing up the possibility of divorce before they have married might cause undue strain to their relationship. And that is a possibility. On the other hand, once the honeymoon is over, couples that survive and thrive are those who can be and are upfront with one another. Getting comfortable discussing finances might safeguard couples from future expectations and misunderstandings. It is not news that married couples fight over money. Yet marriages often start without one or both parties having any idea where the other stands financially. Many couples do not discuss before they are married their specific assets and/or debts, how they will handle money, who will be responsible for paying bills or filing

taxes, thoughts on savings, plans for retirement, or if they are saving, what it is they are saving for. Being on the same page financially—which sometimes includes a request for a prenuptial agreement—might save both parties unnecessary headaches down the line. And if a future spouse is unwilling to engage in the prenup conversation, that's probably good information to know *before* entering a marriage.

A smart way to work through terms of a pre-marital agreement is to use the collaborative process. In too many situations, the first thing one spouse knows about a prenup is receiving a fully prepared draft from his or her future spouse or the spouse's attorney. This can be a tremendous jolt, even if it's been discussed before at some level. Agreeing to start in the collaborative process, before anything is drafted, gives both parties an opportunity to express his or her goals at the outset and tends to decrease hard feelings.

Prenuptial agreements should not be entered lightly. The topic can be sensitive and requires time, energy, and money. But if one party has substantial assets entering into a marriage, earns significantly more than the other party, or has children, it's probably a conversation worth having. Regardless of whether a prenuptial agreement ends up being a necessity, I am a strong advocate for couples talking candidly about money—goals, fears, and family history—*before* walking down the aisle. Couples learning early on to be forthright about daily practicalities, however unromantic, might act as an ironic protection to keep their marriage strong. **TBJ**

This article originally appeared on the Hance Law Group's blog and is reprinted with permission.



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