

SOMETHING OLD, SOMETHING NEW, SOMETHING BORROWED, SOMETHING BLUE— AND DON'T FORGET THE PRENUP!

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Why This Marriage Contract Isn't Just for the Rich and Famous—and Postnups Could Become the Next New Trend

By Cheryl L. Young

Donald and Ivana (and, later, Marla) had one. So do Catherine Zeta-Jones and Michael Douglas. Maybe you should, too. Most people think prenups are just for the rich and famous—those people whose financial statements include professional sports teams, TV networks, or 43-story commercial buildings. But, actually, that piece of

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paper is just as important as the something old, something new, something borrowed, something blue that brides traditionally wear when they're walking down the aisle. The protection they offer makes such a difference that these days some women who didn't sign prenups are creating a new tradition by negotiating postnuptial agreements.

What too often gets lost in the flush of romance and the flurry of wedding prepara-

tions is the fact that marriage is, at heart, a financial contract. When you marry, you sign a piece of paper that will determine ownership and disbursement of assets (and debts) accumulated during the marriage (and, in some cases, even those you bring with you into the marriage), in the event of death or divorce. While the incentive to nail down details of who gets what if things don't work out seems more compelling when multimillionaires marry, in fact, prenups may actually be more helpful to couples whose incomes fall well within the national average, who may not be able to afford heavy legal fees to sort things out later on.

That's not to say, of course, that every couple embarking on a happily-ever-after life of wedded bliss needs or wants a prenuptial agreement. Whether or not to have one is an extremely personal decision. Many people shy away from prenups, feeling that requiring one indicates mistrust on the part of one or both partners. When Paul McCartney married Heather Mills last year, she volunteered to sign one, and he gallantly declined. Catherine Zeta-Jones (who reportedly will receive \$2.8 million for every year of her marriage to Michael Douglas in the event of a divorce), on the other hand, told *Vanity Fair*, "I think prenups are brilliant, because it's all sorted out." She admitted that under her agreement with Douglas, she gets "taken care of very well . . . Why should Michael be in a position where half of his fortune, which he's worked bloody hard for, lands in someone else's lap? If I were marrying someone of lesser fortune who was 25 years younger, I'd be doing exactly the same thing." There are equally compelling reasons that couples with lesser fortunes should consider them, too.

Not Just for Rich Folks

Handled with tact, consideration, trust and openness, the process of drawing up a prenuptial agreement can be an affirmation of the strength of a relationship, rather than a foreshadowing of its doom. The process can also be a constructive time to have a realistic discussion with your future spouse about

money management. A prenuptial agreement can detail how bills will be paid during the marriage and whether all income will be put in a joint account or spouses will maintain separate accounts. It can clarify expectations regarding employment, including under which circumstances job relocation will be

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considered, and it can set priorities regarding work/family balance issues. Prenups can stipulate that bills will be paid on a basis that is proportionate to income. Alternately, spouses-to-be could agree to divide costs equally. Or one spouse might pay all the expenses relating to the home, while the other covers living expenses. It can even be used to stipulate how much will be saved annually.

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Whether or not you choose to address these issues in a formal way within the context of a prenup or simply come to an informal consensus, it's good to bring them to the forefront and make sure that everybody is on the same page. There are, however, certain circumstances when the traditional prenup is must—not a luxury.

When Prenups Are a Prerequisite

Almost any woman who has children from a previous marriage should consider a prenup for the protection of her children. To understand how important this is, consider

what could happen in the event of death or divorce if you don't have a prenup. Divorce laws dictate that all assets acquired during marriage, including increase in value from assets that you bring into the marriage (property, or stocks, for instance), are marital and subject to some form of division between the spouses. With



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regard to death, if there is no prenuptial agreement waiving a spouse's right to receive an inheritance, the surviving spouse is entitled to at least one-third of the deceased's estate. Your children stand to lose something in either case.

Under the terms of a prenuptial agreement, however, your spouse can agree that any assets you bring into the marriage will remain yours, regardless of increase in value, if you divorce. Likewise, you can obtain a waiver in the event of death so that your assets can pass to your children.

Similarly, business owners, or those who are about to marry business owners, have special concerns that should be addressed in a prenup. One of my most difficult cases dealt with a bridegroom who owned a business where the bride worked. We agreed that she would receive five percent of the business every year on their wedding anniversary, up to 40 percent. In exchange, she waived any other interest in the business. However, that was only the beginning of the negotiation. He had children from a prior marriage, so we needed significant life insurance and corporate documents to provide the wife the ability to buy out his children's interest in the business upon his death.

Prenup Possibilities

What other situations can a prenup handle? How about loss of income as a result of motherhood? Many career women may know that they will want to stay at home with their children, but they worry about losing income and career momentum during that time. A prenuptial agreement can be

negotiated guaranteeing that, if there are children and the mother decides to stay at home to raise them, she will be entitled to alimony and won't have to fight for it in the courts. Her alimony can be negotiated down to the exact dollar or as a percentage of income. Doing so makes any possible future divorce settlement much less painful.

Another of my favorite tactics is utilizing a sliding scale. For example, with regard to asset division, I often draft the document so that the percentage of the asset varies, depending on both length of marriage and size of the estate. If the couple is married for one to five years, the wife may receive 30 percent; if the marriage lasts five to 10 years, she gets 50 percent, etc. I just resolved a prenuptial agreement whereby the wife will receive 60 percent if the estate is less than one million dollars, 55 percent if the estate is between one million and one and a half million dollars, and 50 percent if the estate is larger than two million dollars. The same technique can apply to alimony.

Agreements have been drafted to include so-called "bad boy" provisions, in which a dollar amount is put on a husband's infidelity. "Bad girls," take note; such provisions can be drafted to protect the husband as well. Other

prenuptial agreements stipulate that the dependant spouse is entitled to nothing in the event of death or divorce. Whether it is wise to marry somebody who presents you with such a "take it or leave it" document, offering you no protection whatsoever, is open to question. The best agreements are negotiated in good faith and provide adequate protection for both husband and wife.

Putting a Price on Peace of Mind

Prenuptial agreements can cost anywhere from \$2,500 to \$10,000 or more, depending on their complexity and the amount of negotiation required. But, considering that many women spend that much on a wedding gown, the price is insignificant. The amount of money spent on a prenuptial agreement pales in comparison with the amount that can be spent on an ugly divorce.

It is possible to draft a prenup, using forms available on the Internet. Legalzoom.com (www.legalzoom.com) is one source for just such a document. My advice, however, is not to try to negotiate a prenuptial without firsthand legal advice. The laws in any given jurisdiction are complicated, and there are very specific requirements that must be met to ensure that the agreement will be valid. More importantly, it's imperative that you fully understand the ramifications of the terms and conditions of the document before you sign it.

Certainly, the act of negotiating a prenuptial agreement is not romantic. However, given the divorce statistics, you cannot afford to overlook the fact that marriage is, in some respects, a business arrangement. Deal with the business aspect, and then lock that piece of paper away in a safe-deposit box and hope that you never have to take it out. Don't wait until the last minute to negotiate a prenup. I have had clients who executed the document on the way to the final fitting for their wedding gown. Get it out of the way early, so that you can relax and focus on your wedding plans and your future together.

Postnuptial Bliss—and Agreements

If you are already married and don't

have a prenup, it's not too late to execute an agreement. You and your spouse can enter into a postnuptial agreement long after your "I do's" have been exchanged. Of course, it may be more difficult to come to an agreement without the leverage of the wedding hanging over everyone's head. But, if you are a dependant spouse, it's worth considering, because it may put you on more even footing. Postnuptial agreements can be handled easily in the context of estate planning. I suspect we will see more of them in the future.

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One final note: prenuptial agreements can be amended—or even terminated—as circumstances change. When Erica Jong, author of "Fear of Flying" and many other best sellers, married her fourth husband, a divorce lawyer, they signed a prenup. Ten years later, they burned it in a wok at a dinner party. "With every year that passes, the matter of money seems less important. Inevitably, funds get mixed; you buy things together and write wills protecting each other. Little by little, prenuptial agreements become outdated," she wrote in an article for *Talk* magazine, describing her decision.

This ultimate display of trust and love may become a 21st century ritual, suggests Jong in her piece, with couples asking at some point in their marriages: "Darling, do you love me enough to burn the prenup?" No attorney, however experienced, can help you answer that question. □

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