Prenups For Young Professionals

SEPTEMBER 12, 2016 • KATIE K. LEONARD , KEVIN J. RUBIN

One question that domestic relations attorneys are frequently asked is, "Do I need a prenuptial agreement?" This is especially common for young professionals or couples entering their second marriages. While prenups have historically been used in situations where a wealthier spouse wants to protect his or her assets, there are several ways in which a prenup can benefit young professionals regardless of how much they have in assets or income. And although everyone's situation is unique, the reality is that most couples can benefit from these contracts.

What Is A Prenup?

A prenup is a contract between two people *before* their marriage that defines certain rights and obligations in the event they divorce or one of them dies. Because of the complexities surrounding the enforcement of prenups and the ever-changing law impacting how they may be interpreted by a divorce court, it is strongly recommended that you use a family law attorney to draft the document instead of relying on standard templates found online.

Here's why: In most states, there are certain requirements that must be adhered to for the agreement to even be enforceable. One such requirement is that both spouses must have had the opportunity to obtain independent counsel to review the terms of the prenup. Another requirement is that the parties must each fully disclose their financial circumstances, including income from all sources, and a detailed listing of all assets and liabilities. Each state has its own standards for the enforcement of prenups, so it is important to talk with your lawyer about your state's requirements.

What Does It Address?

A prenup often addresses two major financial issues that arise in most divorce cases—alimony and property division.

Alimony. Alimony is periodic payments from one spouse to another for support after a divorce. There are many reasons a spouse might receive alimony, for instance if he or she is delaying or stopping a career to care for children. Property division is how a court disposes of property acquired during a marriage, such as financial accounts, real estate, automobiles and furniture.

Property. There are two types of property in a divorce case, separate items and marital items. Broadly speaking, separate property is that which a party brings into a marriage or acquires during a marriage from inheritance or a third-party gift. Sometimes, it can be converted into marital property by certain actions, such as when a home is retitled during a marriage into joint names. The court (or jury) has broad discretion in equitable division states to divide the marital property in a fair and equitable manner, which does not necessarily mean an equal division.

Most people believe that in the event of a divorce, their assets will be divided “equally.” This is not always the case, which is why prenups can help couples avoid expensive arguments in the unfortunate event of a divorce.

The beauty of a prenup is that parties can agree at the outset of a marriage how to address these thorny issues that can cost tens of thousands of dollars to litigate in the event of a divorce.

For example, the parties can agree to a complete waiver of any alimony whatsoever in the event of a divorce. Or they could agree to lump sum alimony payments with increasing amounts based on the length of the marriage. Alternatively, they might not discuss alimony at all but decide to take other cost-saving measures—attending mediation, for example, or agreeing to privately arbitrate the issue.

For couples with limited financial assets, a provision simply protecting their separate property could be beneficial. For example, both parties might be young and have small retirement accounts. They could establish the value of their retirement accounts at the time of the divorce and protect them from equitable distribution later on. They could agree that their respective retirement accounts will remain separate. Other financial accounts, such as stocks, savings accounts and other investments could be handled in a similar manner.

As for property division, parties can agree that no marital property will be created during a marriage and any property or funds acquired by a party remain his or her separate property in the event of a divorce. Alternatively, parties can designate certain assets as being a party's separate property and "off limits"—assets such as a business, residence or financial account. Finally, the parties can agree on how marital property is divided in the event of a divorce and provide mechanisms to address future disputes about an asset's valuation or about the division of illiquid assets such as real property or furniture.

What About The Kids?

While custody and child support are also major issues in most divorce cases, the court evaluates the best interest of the children at the time of a divorce for custody and the then-current incomes of the parties for determining child support. For these reasons, these items are not commonly found in prenups, since the terms may be disregarded or struck entirely.

Why Sign A Prenup?

By entering into a prenuptial agreement and "resolving" certain issues before a divorce, couples of any financial status can outline their own financial obligations, better understand their financial circumstances at the time of the marriage and outline how their financial responsibilities will be shared during their marriage.

For instance, a couple may decide to maintain separate banking accounts and provide for the protection of those accounts in a divorce. Conversely, the parties may decide to share financial accounts and address how the joint financial assets will be divided if the spouses part ways. The couple may establish provisions for calculating separate property, such as the value of a retirement account as of the date of the marriage or the down payment they made on a residence. The couple may decide how the title of an asset will affect the nature of the property.

For example, if one spouse owns a home before the marriage and wishes to add the other party to the title, the prenuptial agreement could specify that the home will remain the separate property of the purchasing spouse. While it may be uncomfortable to address these issues before the marriage, it spares the couples the emotional strain, financial expense and litigation costs if they split.

The Last Word

At a minimum, anyone who is contemplating marriage should speak with a domestic relations attorney and understand his or her rights. Even if the person is not independently wealthy or does not have significant assets, she may benefit from protecting the assets she does have or by establishing the way the finances will be managed during her marriage. Prenuptial agreements are not expensive, especially in comparison with the cost of a contested divorce. So two people who take the time to review each another's finances before they marry will benefit in many ways, especially if they ultimately decide to end their relationship. If they remain married, they will appreciate the time they spent at the beginning of their marriage outlining their financial landscape.

Katie Kiihnl Leonard and Kevin J. Rubin are partners in the family law firm Boyd Collar Nolen & Tuggle in Atlanta. They may be reached at (770) 953-4300 or at kk@bcntlaw.com and krubin@bcntlaw.com.
