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New York Divorce and Family Law Blog

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Pre-Nuptial Agreements: A Smart Money Move

There are few certainties in life. However, one of life's certainties is that all marriages will end, whether by death or divorce.

At the end of marriage, whether by divorce or death, disputes over money and the disposition of marital assets may be inevitable. However, a pre-nuptial agreement can help lessen the potential for conflict by clearing identifying the parties separate property and defining the parties' rights to the marital property.

A recent article illustrated [why a Pre-Nup may be a smart money move](#).

1. Why are pre-nuptial agreements beneficial?

"One of the common reasons to get a pre-nup is to protect the interests of children from a prior marriage. A sizable portion of assets (called the elective share) may automatically go to a spouse upon death in most states, but this can be avoided by using a pre-nup."

This elective share can be waived in a pre-nup. This is an important consideration, particularly where there are children from a prior marriage.

"Another scenario when a pre-nup makes sense is when there's a significant disparity in wealth. It's also worth considering if you or your spouse-to-be owns a small business or a stake in a family business; a pre-nup can ensure ownership isn't contested in a divorce."

2. Cost

While a pre-nup may be expensive to draw up, the cost of litigating a contested divorce is even greater.

3. What should a pre-nuptial agreement include?

The main purpose of a premarital agreement is sort out who owns what in the event of a divorce. The agreement may not only define what is a person's separate property, but it will also specify what assets or debts will be joint or marital and direct how they will be split in the event of divorce.

The agreement can also direct if, and how, alimony or spousal maintenance will be paid.

Some agreements even go as far as to provide how household expenses will be paid during the marriage.

It is important to note that the agreement cannot be procured by fraud, coercion or duress and the terms of the agreement cannot be unconscionable. Crying to the court that "I only signed the agreement because he would not marry me otherwise" is not duress.