

Top 10 Reasons Why “Prenups” Are Romantic

By Cari Rincker, Esq.

Prenuptial agreements (a/k/a “prenups”) are usually thought of as being “unromantic.” After all—who likes to talk about divorce when they are planning their wedding? To the contrary, obtaining a prenuptial agreement is one of the most prudent, intelligent things that a couple can do. It doesn’t matter if the couple is young or old, rich or poor. Almost every couple can benefit from obtaining a prenuptial agreement. Here are the “Top 10 Reasons”:

1. There is something loving about telling someone, "No matter what happens to us, I want to make sure that you're taken care of."

It shouldn't be taboo to talk about what happens if the relationship should change and one or both people decide to go their separate ways. Nobody gets on an airplane thinking that it is going to crash, yet we still go over the safety instructions. Analogously, we don't buy disability insurance believing we're going to get in a tragic car accident one day. It's responsible to think about (and prepare for) all of the Big D's—Death, Divorce, Destruction, Disability, and Disease.

Everyone wants to believe that the love of their life won't hurt them. This naivety can come back to bite. As one client eloquently said, "we realize that if we get divorced we'll be different people" and have a strained relationship. It's nearly impossible to put yourself in the state of mind of someone going through a divorce, sometimes lasting longer than World War II. Prenups allow each person to say, "even if I someday hate you, I will still care for you" and make sure you get a fair shake.

2. Getting financially naked help build trust.

Prenups are about disclosure, disclosure, disclosure. It's dumbfounding how many couples are engaged or married and “in the dark” about the financial well-being of their other half: what s/he has both in assets and liabilities, what s/he does for a living and how much s/he makes, what other income streams s/he has, what business interests does s/he have, what types of inheritances does s/he expect. The divorce chapter in a couple’s life is not the time to learn the answers to these questions.

It is intriguing that most people do more due diligence on a house that they buy than someone they marry. Marriage is, among other things, a financial partnership. Without getting financially intimate with one another before marriage, parties don't fully know the financial health of other person. Only with financial transparency can the couple have true knowledge about the person they are committing their life to.

3. Who wants to go to war in court with the love of their life?

If there is anything that matrimonial lawyers can agree on, it's that divorce litigation is expensive. A typical retainer for a contested divorce is five figures (i.e., over \$10,000). In a prenuptial agreement, the parties can agree how to equitably divide marital property (including

business interests, appreciation of separate property, professional licenses) and whether spousal maintenance (temporary or durational maintenance) may be appropriate.

In way of background, everything in a marriage fits into one of three buckets: two separate property buckets for each spouse and one marital property bucket. The law differs from state to state on what is included in the "separate property" and "marital property" buckets. However, parties can decide on their own what they want to put in each of the three buckets.

Additionally, parties can decide to resolve disputes involving their children (such as custody, access/parenting time, and child support) and ancillary issues of the divorce with mediation. The Alternative Dispute Resolution ("ADR") clause should allow each party to seek court intervention in the case of an emergency. Litigation ruins families. Mediation provides the parties an opportunity to decide what is best for their family and their life and to amicably work through a dispute.

4. Prenups Empower Both Parties.

It is a common misconception that prenuptial agreements are really couples "planning for a divorce"; to the contrary, prenuptial agreements are about empowerment of both parties. Prenuptial agreements allow the parties to take the law in their own hands.

Matrimonial law is not clear-cut. There are many ambiguities and inconsistencies in the law. Judges in different courts and different counties apply the law differently. It's empowering for parties to be in control of these important financial decisions.

One final note about empowerment – in New York (like most states), each party entering into a prenuptial agreement should have independent counsel of their choice. Even if the couple hires a neutral third party mediator to facilitate the negotiation process and draft the agreement, each side should nonetheless seek separate counsel. It is required that each person knowingly enter into a prenuptial agreement informed of their rights. The preup process gives each party an opportunity to ask questions about matrimonial law and how a prenuptial agreement may or may not affect certain issues.

5. The love of your life will care about what happens "when death do [you] part."

In New York, you cannot disinherit your spouse. This is called the law of spousal election pursuant to EPTL § 5-1.1-A where the spouse will get \$50K or 1/3 of the estate, whichever is more. Prenuptial agreements give parties a choice on whether to "waive" their right to spousal election to receive less or more than this amount; however, couples can opt to have their Last Will and Testament to decide. Furthermore, prenups may also require one or both parties to provide life insurance for the other party or set up a trust for the other person.

6. It's comforting to make promises with your spouse about how you'll take care of him or her during the marriage.

Prenuptial agreements are not always about the Big D; it can also provide promises for how each spouse will take care of the other spouse during the marriage. Examples may include:

- Providing health insurance
- Obtaining life and/or disability insurance
- Purchasing a Marital Residence and putting it in joint name
- Providing the other spouse access to certain funds
- Putting monies in a household account
- Taking care of children
- Estate planning

7. True love keeps secrets.

Oftentimes, prenuptial agreements include a confidentiality clause requiring the parties to keep the terms of the prenuptial agreement, financial information of the parties, and perhaps other information obtained during the marriage (such as business trade secrets) private. After all, true love keeps secrets. And it's okay to have a contract say so.

8. “Roses are red, Violets are blue. A prenup is the first step to my financial future with you.”

It is important for couples to be on the same page with how they are going to manage their finances together. Will they keep separate accounts or have joint accounts? Who will be managing the finances for the household? Opening up the finances during the prenup process can be a great conversation starter for these important decisions. This is a big undertaking for many couples. Each person needs to think about their goals and values. The prenup negotiation process can take weeks, or sometimes months. For many couples, this is their first step to building a financial future with one another.

In order to prevent duress, couples should ideally sign prenuptial agreement about 3-6 months before the wedding date or before the wedding invitations are sent out. However, if this ship has sailed, couples should start the conversation as soon as possible. There are no "cookie cutter" prenuptial agreements—each prenup agreement is as unique as each couple.

9. It says, “If we separate, I want the procedures to be fair.”

Prenuptial agreements allow couples to think about the separation scenario (or in the words of Gwyneth Paltrow, “conscious uncoupling”). Who will live in the Marital Residence? How much notice will the other party have to move out and find a new place to live? Will moving expenses be paid for by marital funds? How will the procedures differ if the parties have children or a second home? Will temporary spousal support be paid during this time? Will both spouses have access to various bank accounts? How will attorneys' fees and court costs be paid?

10. Who Doesn't Love a Beautiful Sunset?

Some couples prefer to add a “sunset provision” to their prenup stating that the prenup itself will no longer be valid after a certain number of years or after the first child is born. Alternatively, a “cheating clause” could make the prenup valid in cases where a divorce is based on adultery or change the terms of how marital assets are divided.

Prenups get a bad rap for turning marriages into business relationships—but that isn't the case. Life and love are both about planning for the future. Let's shift the lens we see prenuptial agreements through—it can be a powerful way to bring couples closer together instead tearing them apart. And maybe, just maybe, we could all see a prenuptial agreement as being “romantic.”

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