

The “Daily Plan-It™”

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Understanding Prenuptial Agreements

To pre-nup or not to pre-nup...that is the question. Clients who are widowed, or who are financially successful, often hesitate to give their hands in marriage for fear that if something goes wrong, they may lose a substantial portion of their assets in a divorce. As advisors, we want to support our clients and hope that their pending matrimony will be blessed so that they live happily ever after. But, as we all unfortunately know, marriages too frequently end in hostilities ever after. Consequently, having a brief understanding of the two key types of “nuptial” agreements is key to any advisor.

Protective Duos: Pre- and Postnuptial

There are two types of nuptial agreements. A prenuptial agreement is done *prior* to the actual marriage ceremony. A postnuptial agreement is created and signed after vows have taken place.

Prenuptials are probably the most popular among the two in first and second marriages. These are created and signed by younger couples who are either without children, or in blended family situations. Postnuptial agreements are usually created and signed among couples who are in second and third marriages and are concerned about estate planning issues. (We’ll spend more time discussing them in our next issue.)

Prenuptial agreements usually focus on what happens if the marriage ends in divorce. It addresses key issues such as child support, alimony, and the agreed upon division of assets. However, they often fail to address what may occur upon the death of either party. It’s a huge blind spot in many prenuptial agreements. The parties are so concerned about focusing on what happens in case of divorce that they fail to address key estate planning issues. In many states, for example, the surviving spouse is automatically entitled to one-third of the deceased spouse’s estate, the right to live in the home for life, and all jointly-owned assets.

Tips for your practice

If you’re involved in preparing a prenuptial agreement, make sure that it addresses the common issues—child support, alimony, and division of property—as well as key estate planning issues in case of death. In our experience, many of these issues can be solved with the purchase of life insurance.

Obviously, the value of these types of marital agreements is to reduce the risk of heated arguments later. Our experience has shown us that the time and effort put into addressing pre- or postnuptial agreements will save a tremendous amount of money, pain, and time if the marriage fails, or if either of the parties dies. It may be awkward and difficult to work on the front end, but the reduction of stress and fighting in case of divorce or death, is well worth it.

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