

May Prenups for June Brides

The weather is getting warmer, flowers are blooming, the grass is growing and marriage season is once again upon us. While spring remains the prime time for weddings, many other traditional aspects of marriage have changed over time, including the age at which people get married. Indeed, today, the average age of women entering a first marriage is 26.1 years old, compared to 20.3 years old in 1960. For men, the average age for a first marriage is 28.1 compared to 22.8 about 50 years ago. As a result, couples today are more mature, have more established careers and more assets than in years past. This is doubly true considering how many people enter into second (or third) marriages with decades of assets and minor children for whom they provide.

Ensuring those assets are protected through a prenuptial contract should be one of the first things couples do before signing a marriage contract. Discussing a prenuptial agreement isn't the most comfortable or romantic thing to do, however, it will prove much less awkward and stressful to do it at the onset of the marriage than when things fall apart.

The sad truth is barely 35 percent of marriages survive their 25th anniversaries and only 21 percent of couples get to celebrate their 35th anniversary together. If you can come together and discuss your goals and viewpoints regarding finances before you actually get married -- now, out of love, consideration and affection, as opposed to later when things may eventually get out of hand -- you effectively minimize one of the most common reasons for divorce and one of the most difficult aspects of settling one.

A valid prenuptial agreement requires several essential elements as follows:

1. It must be in writing.
2. It cannot be unconscionable, meaning it must meet basic standards of fairness.
3. There must be full and fair disclosure when the agreement is executed.
4. It must be executed by both parties.
5. Each party must have adequate legal independent representation. For example, if the attorney is a business associate, longtime friend or relative of one spouse and is engaged by the other to represent them, the perceived independence of this attorney can lead to issues and jeopardize the entire agreement.
6. The agreement must be entered into within a reasonable time frame prior to the marriage. For example, it cannot be "forced" on the other party the night before the actual wedding which can be legally construed as a threat.

The time when you are discussing your prenuptial contract can also be an ideal opportunity to discuss issues relating to the upbringing of any children you may have together. Prenuptial agreements cannot decide custody and access issues, as matters involving children must be decided by a court, but, couples are better able to address what is in the children's best interests before they get married rather than when they are engaged in a bitter divorce battle.

In addition to these elements, many states require all assets and liabilities -- and their monetary values -- be disclosed in a statement that is appended to the prenuptial agreement. As you can imagine, many assets such as businesses, partnerships, stock

options and real estate do not have readily available values. This is when the services of a forensic accountant and experienced valuation expert should be sought. Any disparity in values should be addressed and resolved before the marriage begins so there are no lingering issues if and when the marriage comes to an end.

Over the years, society's views on marriage have evolved with prenuptial agreements becoming more and more commonplace. While you should seriously consider having a prenuptial agreement, it is also critically important to consider how and when to introduce this delicate subject to your significant other. If it is perceived as a vehicle to make demands, your future spouse will feel you are simply protecting yourself and there will already be a level of distrust.

The important point to remember is that the prenuptial contract will serve as a protective agreement when circumstances beyond your control undoubtedly arise. It will document your intent as to each of your assets and incomes currently in existence and those which will accumulate in the marriage.

Even the best of marriages hit many bumps along the road. So, remember to fasten your seatbelts before you start this special journey!

By Ilan Hirschfeld