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Prenuptial agreements and marital trusts are unromantic, but important



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Ask a 20-something about-to-be bride what she thinks of prenuptial agreements and you'll probably hear how unromantic she believes they are. Her betrothed is likely to agree. After all, most first-timers walking down that matrimonial aisle are usually so consumed with love and adoration for one another that they're unable to see much beyond their future plans, hopes and dreams. You can thank love for that.

Ask a 70-year-old blushing bride what she thinks about prenuptial agreements, and she'll tell you they're a necessity. Understanding marriage is as much of a business relationship as anything else, her betrothed will no doubt agree. You can thank love for that, too.

Love, it turns out, is as complicated as a marriage no matter what age or stage in life Cupid's arrow pierces someone's heart. On one hand it's a huge turn-on — a chemically enhanced one at that. On the other, it can take those joined together on a path of twists and turns that is fraught with as much pain as pleasure.

Back to the chemical part, that brand new, holy mackerel, I-can't-believe-this-is-happening-to-me in-love feeling comes from your brain pumping dopamine into your system. That triggers the release of two hormones, serotonin and oxytocin. The result: A rush that makes you feel as though your love interest and the legal union you've made is guaranteed to last forever.

But as with all chemical highs, the impact from even those our bodies make naturally loses its oomph over time. So as with everything else we become accustomed to, the jolt from that love-high can peter out. Then what we're left with is the marriage. And marriages, records show, have a strong tendency to peter out, too.

According to DivorceRate.org, the divorce rate for first-time marriages in the United States is 41 percent. Perhaps more startling is that marrying more often doesn't increase the odds of getting it right: The divorce rate for second marriages is 60 percent; for third marriages, 73 percent. Who knows what it is for those taking that chance for the fourth or more time?

"You have to be a realist in the sense that many first-time marriages end up in divorce," says **Howard M. Rudolph**, a Florida board-certified marital and family law attorney in West Palm Beach. "And, an even higher percentage of second marriages end in divorce, as well. As a result, you have to yes, be in love. But you've got to be realistic about the situation."

Enter the (realistic) prenuptial agreement.

While not particularly popular with the young marrying for the first time — unless one or both come to the table with assets or fortunes — the prenuptial agreement is as much a natural part of the wedding planning to-do list for those entering marriage for a second, third, fourth, fifth or more time as is, say, ordering flowers for the event. That's because most come to their second marriage (or any others that may follow) with assets, such as property or businesses, or children they'd like to protect financially.

"More people are doing prenuptial agreements because of the certainty of what each party's entitlement would be if the marriage were to end in divorce," says **Rudolph**, who has been in practice locally since 1990.

Issues such as alimony, equity distribution, business ownership and children from previous marriages can all be addressed in a prenuptial agreement. And they may include things such as a sunset provision, meaning the terms of the agreement will dissolve after a certain number of years have passed, provided the couple is still married, or even a bad-boy provision. That, as you might guess, sets forth specific terms to be followed if one of the parties commits adultery.

How iron-clad the prenup is, however, depends whether it was properly drafted.

Basically that requires the future husband and future wife to hire their own attorneys, making sure they have retained attorneys experienced in drafting prenuptial agreements. After that, it's a question of making one's wishes known plus — and this is a big plus — being honest and providing full and complete disclosure of all their financial circumstances. Not doing the latter honestly could muck everything up if the truth of someone's assets surfaces. Or, if a divorce comes into play.

"As long as both parties are entering into the relationship without coercion, duress or undue influence, then it would be a properly executed prenuptial agreement," says **Rudolph**, who has drafted more than 100 prenuptial agreements.

Prenups, by the way, are private documents and their contents remains private until someone either blabs or divorce papers are filed.

Marital trusts

Those with a prenuptial agreement who want to further protect their assets and wishes, often choose to have some form of marital trust created.

The marital trust typically used when there is a prenup in place is a Qualified Terminable Interest Property Trust — or QTIP.

Among other things, a QTIP trust controls who the beneficiaries of an estate are after one spouse dies.

"The QTIP trust was created so that the surviving spouse could receive income and or principal, but gives them no say in how assets are to be distributed after his or her death," says Richard J. Barron, a Florida Bar board-certified specialist in wills, trusts and estates.

When all is said and done, a prenuptial agreement is a prenuptial agreement, QTIPS are QTIPS, love is love, and marriage is marriage. Each are separate entities offering a unique experience for the parties involved.

While they do serve an often-necessary purpose, prenuptial agreements can be uncomfortable, emotional and even confusing.

To make it easier on both parties, perhaps there ought to be some kind of "Truth in Marriage" law enacted: one that begins by changing the word "matrimony" to "matrimoney" — and let the love shake out from there