

Long Island Law

This Spring More Couples Should Consider Prenuptials Before Walking Down the Aisle

With every Spring comes the inevitable parade of brides and grooms exchanging solemn vows of marriage. While few couples enter marriage anticipating divorce and considering that about 10% of marriages end in divorce by the end of the fifth year, more couples should consider prenuptial agreements as a means of reducing concern over how assets are divided between spouses in the event of divorce or death of a spouse.

An antenuptial or prenuptial agreement is a contract entered into by a couple prior to marriage that seeks to provide a greater degree of certainty and to limit New York's equitable distribution or child support laws. The agreement must be in writing and must be signed and acknowledged by both parties and will often be sought when there is a disparity in pre-marital separate property or earning power of the couple. While it can supersede equitable distribution and provide for spousal support, it cannot then limit support that the spouse will become a public charge. Provided that a prospective spouse did not enter into the agreement under

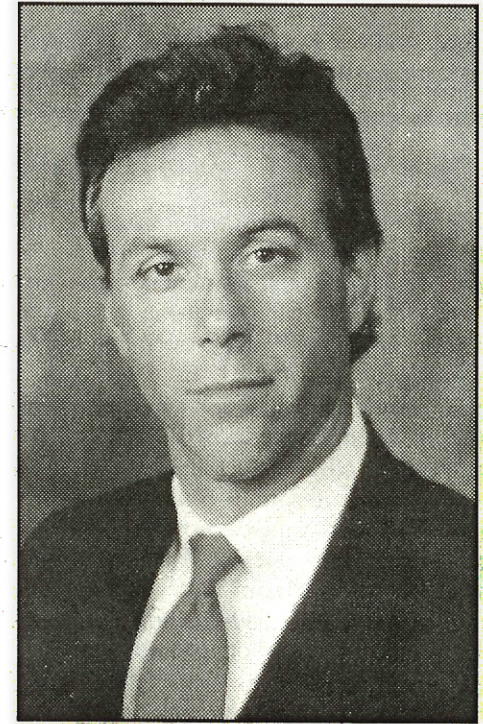
or the agreement excessively one-sided, then the agreement is generally enforceable in the event of divorce or death of a spouse.

The decision to create a prenuptial agreement is a highly personal one. Often, one may be reluctant to explore this topic with a prospective spouse out of concern that such a discussion could put a cloud over the marriage and cast doubt on the devotion of the person seeking the agreement. However, considering that couples are marrying later in life and that divorced spouses are remarrying, there is often disparity between spouses where one may have accumulated wealth or have built a business. Under New York's Domestic Relations Law, the parties can determine the amount (if any) and duration of maintenance, rather than leaving this issue to a court to decide. Therefore, when there is a large disparity in income between the parties, it is recommended that the wealthier spouse seek a prenuptial agreement.

Another trend in our society suggesting the growing need for using prenuptial agreements is the grow-

ing of persons in their later years with grown children. Under New York's elective share statute, a surviving spouse is entitled to the greater of \$50,000 or one-third of the decedent's estate, regardless of how assets are disposed of in a will. The idea of re-marriage can cause concern among grown children, especially when substantial assets are at stake, including a family business or a childhood home. Since prenuptials can include contemplation of death and are also enforceable upon death, they could provide greater certainty by limiting the assets to be left to the surviving spouse and thus accomplishing what a will cannot due to the elective share.

While prenuptial agreements are often not an easy topic to discuss, more couples should consider doing so. If used properly, they can help to reduce fears and uncertainty, while ensuring that spouses and children are properly provided for. They can also help to reinforce the bonds of trust that the marriage is based on love and not based on the amount of assets and earning poten-



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