

Debunking the Prenup Stigma

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People love choices. Typical Americans, and especially Californians, are no exception. In the "golden state", residents pride themselves on novelty and uniqueness in most aspects of their lives. Inhabitants here scoff at the notion of a lifestyle template-they would rather tailor their own existence to meet their specific needs and desires. Case in point-personal electronic devices.

Almost everyone in California has one-but no one device is quite the same. There are so many exciting choices to make before becoming an owner, such as: What carrier do you choose? What kind of plan do you get? How much do you want to spend each month? How many minutes is enough?

What device do you get? A basic cellular phone? Or an "all-in-one", with phone, e-mail, internet, camera, and music features? Or something in between? Do you get a blue-tooth attachment? This year's model or last year's model? What kind of ring tones will you select? What color will you choose? A carrying case? Accessories of any kind? Certainly, there are more decisions to be made.

The point is that almost everyone leaps at the chance to make these somewhat silly choices. People love the autonomy and self-design this process allows them.

Strangely enough, Californians do not seem to celebrate choice and self-governance when entering into the marital relationship. The vast majority of Californians do not opt to create their own "prenuptial agreement" (a before marriage agreement) with regard to resolution of property and support issues in the event a dissolution occurs.

Rather, they rely on the default community property system which controls here in California, and in several other states. In fact, many argue that the existence of a prenuptial agreement reveals that an impending marriage is doomed to fail. This group would argue that preparing for the ending of a marriage before-hand, during the "good"

times, suggests an underlying deficiency in the relationship. Admittedly, creating a prenuptial agreement requires a couple to venture into territory that may not be comfortable. Imagining the end of a marriage is obviously depressing-and certainly no one wants to be depressed, especially after they have decided to embark on a new life with a partner. Nonetheless, this endeavor forces two people to communicate about important financial issues they may have never discussed before, such as: division of assets (present and future), division of debts (present and future), spousal support, child support, etc. In that way, it could even be characterized as a litmus test for the marriage.

In any event, the creation of a prenuptial agreement allows a couple to craft their own plan with regard to their marital future. It provides a way to tailor and design the possible termination of a marriage to completely meet your needs and wants. In essence, a prenuptial agreement puts a couple in the driver's seat, letting two individuals make their own specialized marital laws. So why not take advantage of this ability to self-govern? If one is willing to take so much care in ensuring their favorite song is also their ring tone, surely, they should invest as much time (if not more) protecting their legal interests if a divorce ensues.

So, for those out there brave (and wise) enough to create their own laws, the following is a brief summary of the legal requirements California imposes upon prenuptial

agreements in 2007. The agreement shall:

Be in contemplation of marriage; Be in writing; Be signed by both parties; Not adversely affect a child's right to support; Not be in violation of public policy or a statute imposing a criminal penalty; Be voluntarily entered into, which is defined as: the party (against whom enforcement is

sought) being represented by legal counsel at the time of signing the agreement or said representation being expressly waived, in a separate writing the party (against whom enforcement is sought) having not less than seven calendar days between the time that the party was first presented with the agreement and advised to seek independent counsel and the time the agreement was signed the party (against whom enforcement is sought if unrepresented by counsel) was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written the explanation of these rights must be memorialized in an agreement in writing and delivered to the party prior to signing the agreement receipt of this explanation (as well as the source) must also be acknowledged in a signed document All documents were signed without duress, fraud, undue influence, or lack

of capacity; and Not be unconscionable, which is defined

as: the party being provided a fair, reasonable, and full disclosure of the property and financial obligations of the party the party voluntarily and expressly waiving their right to disclosure of the property and financial obligations beyond disclosure provided the party having an adequate knowledge of the property and financial obligations.

***If the agreement contains provisions regarding the issue of spousal support, including, but not limited to, a waiver of said support, the party against whom enforcement is sought must be represented by independent counsel at the time of signing.

Clearly, the aforementioned guidelines are intended only to be a starting point in the creation of a prenuptial agreement. Once you and your partner have discussed the ideal plan for your legal partnership, it is most advisable to take said plans to an attorney to have him or her memorialize the agreement.

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