

***Houston Intown
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Legally Speaking

Here Comes The Bride, Attorney By Her Side...

With wedding season fast approaching, brides, grooms and wedding planners are scurrying to perfect last minute details. But before any "I do's" are spoken, many preparations take place – gowns and tuxedos are ordered and tailored, flowers are selected and arranged, the menu is sampled and the caterer booked, and the Prenuptial Agreement is prepared and executed.

Forgot the "pre-nup"? Them's fightin' words, harsh enough to end an engagement! And yet if the engaged couple is at odds on this and other financial matters, their trip down the aisle may set them up for a trip down a very rocky financial road.

Believe it or not, Prenuptial Agreements are more common now than in prior years. This is due to individuals marrying later in life and the high percentage of second marriages. Prenuptial Agreements not only protect your property in the event of divorce, but will also protect your property at your death as well. For instance, imagine that you inherited property from your grandfather that you want left to your children from a previous marriage. A Prenuptial Agreement will prevent your property from being commingled with your community property, allowing you the freedom to select the beneficiary.

Most of my clients have the misconception that since their individual name is on an asset or account, it is their separate property. Unfortunately, Texas' property laws presume that all property acquired by a husband and wife during marriage is community property (i.e. one-half is owned by each spouse). The four exceptions to this rule are: (1) any property a spouse receives as a gift or inheritance is that spouse's separate property; (2) the property each spouse brings into the marriage is that spouse's separate property; (3) if a couple moves from a separate property state (i.e. Oklahoma) to Texas, the property remains owned by one spouse or the other; and (4) property that the spouses partition by agreement is one spouse's property or the other's as stated in the agreement.

In addition, Texas' property laws consider all income earned by either spouse (i.e. salary, interest, dividend, royalties, etc.) as community property, including income earned on separate property (i.e. dividends earned on inherited stock). A properly drafted Prenuptial Agreement should state that all income is the separate property of the earning spouse. This avoids any community property from being commingled with separate property, which usually occurs by reinvesting dividends and interest in a brokerage or financial institution account.

Here are several suggestions to make your Prenuptial Agreement more enforceable: (1) each party should have his/her own independent attorney to represent his/her interests; (2) the Agreement should be signed several weeks or months prior to the wedding to avoid any hints of improprieties (i.e. involuntariness or duress in executing the Agreement); and (3) reasonable disclosure of financials especially if the party in favor of the Prenuptial Agreement is wealthier than the other party.

While your wedding planner is scurrying, make sure your attorney is penning. By the way, my wife and I have our own form of a Prenuptial Agreement, which states, "what's hers is hers and what's mine is hers!" If that's the case in your home too, consider yourself fortunate that each party knows where they stand and look forward to years of wedded bliss!

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