# Considering A Prenuptial Agreement: Should My Children Have One?

*Ask anyone being married for the first time what his or her top priority is at the moment and you're likely to hear anything but the words "premarital agreement." After all, the young couple assumes that it's all about love – and theirs will be the marriage that lasts.*

But a 2003 study published by Harvard University begs to disagree. The study revealed that while most people understood that roughly half of new marriages end in divorce, only 12 percent of those surveyed thought that they would become a statistical victim.

## It's All About The Love…Or Is It?

Hope springs eternal for the young. Optimism is part of their charm. Unfortunately realism – at least in those first few happy, bliss-filled days of wedding plans – is not. What the young couple often fails to realize is that they're overlooking their greatest asset in life – and one of the biggest that they'll bring into the marriage. That asset is not a bank account, a home, an antique or anything physical. It is, plainly stated, the capacity to earn money.

With rare exception, most wealth is created through two means: earning money and foregoing consumption. Most couples who marry both work and defer parenthood until after their marriage. If things do not work out, they perceive that they will divide the wedding gifts and resume life as it was before marriage. For many couples, formal education pays off with a first meaningful job – thanks to a huge investment from their parents – that starts the individual, not the couple, on the path toward greater earning capacity.

Several years later, the couple may add home ownership and parenthood to the mix, and the dynamic starts to change. If both partners keep working at their full earning capacities, they may have financial and custody issues to dispute should the marriage dissolve, but they both leave with the ability to be self-supporting in a meaningful way.

But what happens when one partner takes time away from the workforce?

## And Baby Makes…For Uncertain Earnings Potential

Ask that same young couple, now happily married, about the prospect of children, and more often than not you'll find that there are definite plans for a first baby, and that both are clear that one partner will stay home with the child. Will it be for a month? A year? Five years?

And so the earning capacities, which were once quite equal, now begin to change. Many couples miss the fact that the parent who steps off the employment escalator for any significant period of time (beyond a few months) is making a massive sacrifice in terms of his or her earning capacity over the long run. When that parent's resume has the title of "homemaker," employers take a different tack. A young person with a graduate degree and outstanding employment experience who once commanded a six-figure salary can easily find that when he or she returns to the market just three to five years later, the employer is discussing a starting salary that is half of what the prospective employee was making when he or she left the market.

And when those couples divorce, that's when the arguments begin. In domestic law, one of the largest areas of dispute is the issue about returning to work. It usually ranges from "My spouse just refused to go back to work" to "I was encouraged to stay home with the baby." Memories on this subject are very convenient years after the fact.

This kind of danger cannot be overstated. Most people who discuss premarital agreements are thinking about the assets they have and are only toying with the thought of assets they might acquire. But the engine of asset accumulation is income, and far too many young people fail to realize that once that engine is silenced, it is very difficult to restart.

## Craft Future Plans With Care

There are many parents in America who are working with estate attorneys to craft plans that transmit wealth to their children. In making these plans, it is often forgotten that for a child receiving the gift, a divorce can result in money falling due to the daughter- or son-in-law of the donor. The laws vary from state to state, which can make crafting a plan even more complicated because a well-orchestrated gifting plan devised in New Jersey or Delaware can be completely undone when the recipient son and his wife move to Pennsylvania.

The problems become more complicated when family business interests are involved. Typically, parents will give their children shares of stock in a company business as part of a gifting plan. If the business becomes more valuable, each of those gifts may need to be valued to determine what "increase" is part of equitable distribution in divorce. If the business or the donee child can't raise the funds to acquire the "outlaw" interest, the corporation may end up with a former spouse holding shares of a family-owned business – not a pretty prospect for any of the participants.

Premarital agreements or even agreements formed during marriage (in states where post-marriage agreements are recognized and enforceable) can address these issues. In so doing, they define what will happen to gifts. They can also seek to address questions related to loss of earning capacity brought about by the decision of one parent to sacrifice career opportunities to devote energy to childrearing. The plain fact is that these subjects are better addressed before a marital split occurs.

So if you or your children are hearing wedding bells, don't forget to stop and smell the roses…right after you call your attorney to make sure that if this "dream wedding" does end in divorce, you and your child are covered by a strong premarital agreement.

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