

# Agreements Among Partners

## *Family Law for Those Couples Who Plan to Stay Together for the Long Haul*

**By Raquel L. Sefton**

Today's couples can benefit from a written agreement detailing their finances no matter where they find themselves in the arc of their relationship — whether they are just deciding to live together, or facing significant financial choices years after saying “I do.” Even if the parties are not considering marriage, having an understanding of their plans going forward can provide a road map, build critical communication skills, set expectations, and prevent future disputes.

### **WHO BENEFITS**

What if the couple has decided, like many “millennials,” that they are just going to live together, maybe even start a family?

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A cohabitation agreement is in order for those increasing numbers of couples who don't want to marry. Additionally, same-sex couples who cannot marry can benefit from an agreement that defines their goals and plans. For those who can and want to marry, premarital agreements, formerly known as “pre-nups,” are the tool of choice. No longer limited to the family heiress whose parents demand a premarital agreement, these agreements are increasingly a tool for sophisticated couples, career-women who postponed marriage, partners entering second marriages, and parties who increasingly come to the table with equal bargaining power. Finally, post-marital agreements can often be a useful tool for a couple that faces financial or personal changes in their marriage.

Because so many relationships fail due to conflict over communication, finances, and unmet expectations, the process and the product of these agreements can be valuable protection against the future stress and strain of a rela-

tionships. Having an agreement is like having both “insurance” against future misunderstandings and “money in the bank” for these partners and gives them an advantage as they plan their lives going forward.

### **THE STATISTICS**

Statistical evidence reveals a changing landscape in personal relationships that can benefit from such agreements. Although the statistics about the rates of divorce in the United States are well-known, an examination of recent data tells a more nuanced story that provides even more support for agreements among partners. Certainly our rate of marriage has declined over time from the high rate in the 1920s, with the divorce rate steadily increasing. The annual divorce rate of 3.6% per thousand per year in the population remains high, even though it reflects a slight decline from an all-time high of 5.3% in 1981. According to statistical data, 9% of all men and 11.4% of women reported their marital status as divorced in 2009.

Add to this information the trend that the age at which women are marrying has consistently increased over the years, with the average age hitting an all-time high of 30 in the United Kingdom in 2011 (this trend is consistent with women in the United States who continue to wait to get married). A recent and interesting trend includes that of “millennials” (today’s 19- to 29-year olds) preferring parenthood to marriage (although a majority want both). Marriage provides a set of financial rules that couples who plan on unmarried parenthood will lack. Unmarried parents may use a cohabitation agreement to adopt a set of financial rules to keep their relationship on track. What about people on the other end of the spectrum, those entering into a second, third or fourth marriage? A recent Pew study also notes the fact that today more than four-in-ten adults have at least one step-relative in their family — either a stepparent, step- or half-sibling or stepchild. These relationships may dictate a different set of rules from the standard marriage contract imposed by state law. Finally, a recent survey of family law attorneys conducted by the American Academy of Matrimonial Lawyers noted a surge of premarital agreements with an increase in women initiating the request. All these trends point to an increased need for agreements between partners.

#### **HELPING COUPLES WHO WANT TO STAY TOGETHER**

Family law is an area requiring both expertise and experience. Unfortunately, the field is

usually associated only with divorce, and not with successful planning by couples who want to stay together. Governed by state law, family law rules vary widely from state to state and many of their provisions can be counter-intuitive and a trap for the unwary. Many of those who do not practice family law underestimate the complexity of the rules and, furthermore, believe family law is limited to divorce. However, competent family law counsel can be an important resource in financial planning through the use of agreements between partners, whether they plan to marry or not. In fact, many family law practitioners enjoy these types of agreements because they can focus on the more productive aspects of a relationship, planning to last through the “long haul” rather than unraveling an unsuccessful relationship through divorce.

Agreements between those who plan to stay together can avoid future conflict and provide a more solid basis for their relationship for years to come.

#### **DEFINING ROLES**

Parties who cohabit have few rules imposed upon them by law, and can benefit from a cohabitation agreement to set the terms of their financial relationship. Do they want to share financial responsibility for their home? For a business? For their retirement? If the parties decide to have children, they may want to build in financial protections that would otherwise be lacking. For example, how do they want

to plan for the college education of their children? If one party leaves a career in favor of child rearing, should that person have financial protection if they split up? These are just some of the issues that face “millennials” and others who decide to become parents but not enter into marriage. Of course, in a majority of states, same-sex couples cannot marry. They are prime candidates for these types of agreements. Sometimes just having a conversation about these plans can be a benefit to couples planning to live together. These conversations can build communication and planning skills. They can help set expectations and help them begin the process of learning to discuss finances, something that may help prevent future conflict over issues.

Parties planning to marry or register as Domestic Partners can also be well-served by entering into an agreement. Marriage and registration impose a set of state laws on the parties’ finances and personal relationship. These laws are not always intuitive and may not fit the needs of the parties. As our personal relationships become more complex, the set of state rules applying to marriage may become less and less desirable. Given the laws’ complexities and changes over time, it is not surprising that many couples do not even know all the rules that will automatically apply to them upon marriage. Many clients getting divorced after years of marriage are surprised to learn of the complex rules for community property, separate property,

support, etc., even though they lived under those rules for years.

Knowing the rules before getting married can help couples set expectations and organize their finances. For example, the heirless' family will likely want protections for the family fortune that state law may not always provide to married couples. Similarly, that 30-something woman who held off marrying until she established her career may want more protections than those provided under the law, should she decide to put her career on hold for motherhood during marriage. That second-marriage father may want to build in protections for his new step-children while making sure that his children from his prior marriage will have the resources to go to college. Entrepreneurs face particular problems when they bring resources and skills derived from their single life into a marriage. In California, for example, courts have equitable powers to allocate wealth, which is derived from a pre-marital source but created during the marriage, between separate and community property. Partners may want to avoid that type of uncertainty through use of a pre-marital agreement.

Similarly, parties may use a premarital agreement to provide them more certainty than the law allows in other areas such as addressing valuation of businesses and other complicated assets, or spousal support in a short-term marriage. Older couples who marry may choose to keep their finances completely separate for a variety of reasons, including

estate planning techniques and retirement goals. These couples will want to avoid many of the rules imposed by the marriage contract under their state law. Without an agreement, their goals may be unmet.

All of these individuals can benefit from a pre-marital agreement to define their financial goals, create a financial future, and protect all those involved. With sophisticated and educated counsel, the agreements can create a road map for a successful marriage or partnership and build those important communication skills at the same time. Further, the individuals' discussions of issues leading up to such an agreement provide valuable benefits to the couple. Remember that money, communication, and unmet expectations are key issues in all relationships and the process and creation of premarital and preregistration agreements often provide valuable, preventative maintenance to these relationship in these critical areas.

#### **WORKING OUT FINANCIAL 'KINKS'**

Finally, just as a premarital agreement can provide a helpful roadmap for partners at the beginning of their relationship, a post-marital agreement can help work out the financial "kinks" of a relationship in progress. Perhaps one party sold a business, inherited assets, or the parties had the welcome surprise of an addition to the family. Perhaps one partner wants to start a new business and change financial course during the marriage. A partner may

choose to make a gift to the family of an inheritance or may want to ensure a legacy to the children of a first marriage. The parties may agree to take the sale of the business and place funds into a retirement account. The birth of a child may create new needs and expectations for couples who had thought that their marriage would only involve two.

Any unanticipated financial need or event creates the opportunity for a new set of goals, expectations, and needs for a couple. A post-marital agreement can define a relationship in a new light in the face of these events. Again, both the process (communications about finances, goals, life plans) and the product (a post-marital agreement) can be of great benefit to couples whose life had changed during the relationship.

#### **CONCLUSION**

In sum, from the decision to live together to a relationship years into a marriage, these types of agreements provide valuable benefits to partners. As such, these agreements work as vital "insurance" in the event of a disagreement and are literally "money in the bank" for the increasingly complex relationships of the 21st century.