

Prenups: What Every Bride Should Know

It's probably the last thing you want to think about when you're planning a wedding. What if, at some point after saying "I do," one or both of you decide they don't? A prenuptial agreement, a legal document basically outlining the breakdown of assets should a marriage dissolve, may seem like somewhat of a killjoy, but it's a precaution that can give peace of mind and save couples time and money in the long run, Capital Region area attorneys say. "Prenuptial agreements that are mutually negotiated, competently drafted and voluntarily executed enable spouses to dictate how their assets and other matrimonial issues will be decided upon a divorce," says Glenville lawyer Jennifer Powers, a partner at Rutkey of Gordon, Tepper & DeCoursey. Half of today's marriages still end in divorce, and it's been that way for a while, says Barbara King, a partner at Tully Rinckey in Albany. This explains the growing popularity of prenuptial agreements, especially among couples marrying for the second time, she says. "For the last 15 years, I've seen them more," she says. "This trend has been going on for at least the past decade." Often, prenuptial agreements are completed at the last minute, says Rutkey. A Saratoga Springs woman signed a prenup without even reading it. Now, after five years of divorce litigation, tens of thousands of dollars in legal fees and untold heartache, she wishes she had been less naïve. "Probably a lot of women like me are romantic and don't think about financial necessities," she says. "The day before the wedding, I was called into my husband's office. They said, 'You sign this prenup or the wedding is off.' We had both been married before. He was paranoid that I was a gold digger. I had never hired a lawyer in my life. It was all in legalese. I just laughed and signed it. I thought if things didn't work out, it would be very easy for us to split." With hindsight, she advises, "Definitely do not sign a prenup without reading it and without legal counsel. Be suspicious of men who give ultimatums like that or who refuse to disclose their income or savings. I found out during the divorce that he was a multimillionaire. In my case, the prenup was used against me successfully. It was a big red flag the way he did it. If someone does anything like that to you, run in the other direction." Rutkey figures she challenges prenuptial agreements about twice as often as she writes them. "We draft a prenuptial agreement to protect our client from future challenges to its validity," she says. "We are often retained to challenge an agreement when one party to it is not satisfied. In these instances, the court looks at whether the agreement is unfair, unconscionable or procured through fraud, overreaching conduct or duress. In order to avoid a challenge to the agreement, it is best practice for the agreements to be drafted well in advance of the wedding and for the parties to exchange some financial disclosure before the wedding." More men than women seek prenuptial agreements. However, times are changing. "A lot of women are coming into marriages these days with higher earning potential and higher assets," King says. "Some already own property or business interests. The law is gender-neutral. If he stays home and raises the children, he might be entitled to spouse support. I have a lot of cases these days where women out-earn the men and have more assets." King handles about 25 times more divorces than prenups. But divorces are ten times more expensive, she says. "Think about the prenuptial cost as an insurance premium versus the payout for a big accident," she says. "It's nice to have that control." Pooling Resources

Tying the knot is more than just a romantic commitment to share your lives. Marriage is considered both a social and financial partnership, says Albany lawyer Barbara King. "It's

probably the only contract you enter into without knowing what the terms are in advance,” she says. “Most people don’t learn the rules until they get divorced. By then, it can be too late. If you understand that general concept, prenups make a lot of sense.” Under New York law, everything acquired between when you marry and when you legally separate and sue for divorce is marital property, except inheritances, personal injury lawsuit settlements and gifts from third parties. Prenuptial agreements can keep assets separate and even figure in the appreciation of those assets, says Glenville attorney Jennifer Powers Rutkey. Prenups can contain all sorts of other stipulations. There might be penalty clauses for everything from infidelity to gaining 20 pounds. “They can’t deal with custody, but they can deal with spousal maintenance — which used to be called alimony,” says Rutkey. “Some people will tie that into the length of the marriage.” Sometimes, grown children from a previous marriage aiming to protect their inheritance may be the impetus for their parents’ prenuptial agreement, says King. Prenuptial agreements are not for everybody, she says. “The people who need them are going into second marriages, they’ve married later in life after they’ve acquired stuff or there’s a family business and the family is concerned,” she says. “I don’t think they’re necessary for people in their mid-20s and all they have is a used Ford and student loans.”