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PRIVATE CAPITAL MANAGEMENT

The Beloved Prenuptial Agreement

To Have and to Hold, for Better or for Worse, Until Prenup Do Us Part

BY AMY ZEHNDER — STRATEGIC WEALTH COACH

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Getting engaged is typically a time of joyful anticipation. Yet, deep down inside, this joy and excitement is often accompanied by some feelings rarely discussed and often ignored. Rooted in the fear of the unknown, feelings of anxiety and apprehension are sometimes the companions to joy and excitement. What creates these opposing emotions is our innate protective antenna. We don't want to get hurt by someone we deeply love. We want to believe that our partner will have our best interest at heart for decades to come. Nonetheless, we are all fallible humans, and we know this.

As couples enter into matrimony, they confront challenging questions and must make difficult decisions often associated with complex, emotionally charged issues. Some of these decisions can be very difficult for couples to sort through individually, much less discuss with one another.

- Will the bride be taking the groom's last name as her own, hyphenate the two names or retain her maiden name?
- What religious habits or routines will be practiced? Which family gatherings will be attended? How will holidays be spent?
- What about having children? If children are already in the picture, how is the blended family going to work?

And, of course, there are financial decisions to make.

- Shall we keep our money separate? Combine everything or just a portion from each account? Who will manage it? How will each person be involved?
- Who will have access to what? Who will make investment decisions?
- Who will pay the bills? What constitutes spending too much? What is each person allowed to spend on what?

As couples enter into matrimony, they confront challenging questions and must make difficult decisions often associated with complex, emotionally charged issues.

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Somewhere in the process of sorting out financial and estate planning decisions, the dreaded question emerges: "Should I have my fiancé sign a prenuptial agreement?" If there is an inkling that the answer is "yes," then the question becomes: "How do I break the news to my fiancé without causing problems or starting World War III?"

To illustrate this point, Cindi's prenuptial story is about how she reacted when she was asked to sign a prenuptial agreement. She recalled that day with vivid detail:

> Now, I'm a logical, reasonable human being, typically in control of my emotions until the day my fiancé asked me to sign a prenup. You see, he is 14 years my senior and has kids he wanted to protect, but that's not how I saw it at the time. This prenup came across as FAILURE before we started. I'm not GOOD ENOUGH FOR YOU! This was my reality, my perception, and my interpretation. I jumped to the conclusion, "You don't trust me!" I am not sure there was a way he could have communicated the request where I would have been comfortable with signing it. In any case, I begrudgingly went to the attorney's office and signed with a big, fat X—almost ripping the paper—followed by a line across the rest of the signature space. There it was, signed. But I was angry. In fact, I was so angry that I hit an all-time behavioral low; on my way home I proceeded to rip and shred the document into tiny pieces, and then dump them into different recycle bins along the street so that there would be no way of ever piecing this confetti back together.
>
> Although I felt liberated for a moment, I then felt like a dirtbag. Upon arriving home, I had to tell my fiancé what I did. This was probably the most humbling and humiliating thing I have done in my entire life, telling him that I shredded our prenup because I felt he was really saying, "I don't trust you." Among other things, I told him I thought these things should be called PRETRUSTS...clarifying that this is where I want my money to go.
>
> Once I calmed down, I knew signing our prenup was in my best interest, too, if I looked at it with logic. But, I think I needed a better understanding, and certainly a more respectful explanation. Bottom line, it was all in the approach. Once I knew that my needs were taken into consideration as well as the kids' needs, I was good with it. I just wish I would have known that going into it.

WHAT ABOUT TRUST?

There is a great misconception about prenuptial agreements. Although everyone associates them with the level of trust that exists between the couple, a prenuptial agreement is not really about trust or lack thereof, or doubting one's level of commitment or unwavering love. Trust, according to author Charles Feltmen, is about sincerity (that you are honest and say what you mean and mean what you say), reliability (that you keep your promises),

competency (that you have the ability to do what you are doing or propose to do) and care (that you have the other person's interests in mind as well as your own when you make decisions and take actions).[1]

In the pre-marriage stage, trust is not the cause for the prenup decision; if you didn't trust one another, you wouldn't be getting married in the first place. Instead, a prenup is a need for comfort (peace of mind) that is fueled by our fear of the unknown. In the world of prenups, the unknown means death or divorce.

Deep down, there is an inherent need, to some even a duty, to protect one's assets, especially since we live in a world of greed and unpredictability. People take comfort in knowing where and how assets will be preserved and distributed after they are gone. Because our culture has sayings such as, "Money is the root of all evil," and because we've heard horror stories of how people have behaved in unpredictable ways when it comes to money and wills, a prenup provides people with a measure of comfort regarding their assets.

Prenups also provide a means to maintain the original vision and purpose for the assets. If the vision is for family assets to stay within the bloodline, a prenup provides comfort in knowing assets will stay within the family. If assets were meant for educational purposes for future generations, a prenup will help retain that vision. If a closely held family business is involved, the stakes can rise even higher.

So, it is not about love, or the lack thereof, or how much trust exists between the couple. A prenup is a means of achieving peace of mind and, in a sense, controlled comfort over the unknown.

Deciding whether or not to complete a prenuptial agreement can be tricky. There are certain things that every couple and/or family should consider when making the decision.

WHO IS INVOLVED IN THE PRENUP DECISION?

This may seem obvious at first, and for some couples it may be an easy answer. But for many families, especially when family money and/or a family business is involved, other family members (besides the couple) may expect to be involved in prenup decisions. Parents are often a key factor, and larger family governance structures may even make the decision for some couples. Keep in mind the purpose of a prenuptial agreement: to preserve and control family assets for the current and next generations.

Parents may struggle greatly over asking their adult child to have his/her fiancé sign a prenup. This is tricky because parents inherently want to protect their kids, as well as their assets, and usually also have a deep-seated fear of not wanting to interfere with the couple's relationship or convey (even unintentionally) that they don't believe the marriage will last for any length of time, be it one, five or 25 years. This is therefore a tough decision to make, and even harder to impose on an adult child.

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[1] Charles Feltman, *The Thin Book of Trust.* (Bend, OR: Thin Book Publishing, 2009), 14.

Some families, especially those with shared wealth and businesses, have elected to create a family policy regarding prenups.

Parents might consider whether or not they should be the ones to require the prenup for the couple, taking the pressure off the adult child. Although this might prevent an argument for the couple, it could cause a rift between the parents and/or a rift between the parents and the couple—probably not the best thing for anyone. Marriages already signify to the parents that their little girl or boy is all grown up and they are "losing" this child to the world of matrimony. The last thing they want to do is push their child away further. Add to this the typically heightened emotions and stress levels during the wedding planning stages, and a prenup could be the straw that breaks the camel's back. No parent wants to be in this situation.

PERSONAL OR POLICY?

For these reasons, some families, especially those with shared wealth and businesses, have elected to create a family policy regarding prenups. In such cases, prenuptials are a requirement for all who marry into the family, no "ifs," "ands," or "buts" about it. If you want to marry in, you sign a prenup. Done deal. These requirements are often written into a family's governance structures.

When such a policy exists, it takes the pressure or blame off both the parents and the engaged child who must enforce it. It also encourages the dreaded prenup conversation to occur earlier in the couple's courtship or engagement process.

Typically, somewhere before or near the "I do" conversation, the prenup conversation will occur. "You need to know, if we ever plan on getting married, we have a family policy that requires all future in-laws to sign a prenup. That may sound weird, but here's why it exists…." This is best delivered with an explanation of the purpose and intention behind the policy (the why), and any expectations that need to be conveyed along with the message. It's also best delivered and executed months before the wedding date.

Making the decision to do a prenup is not the hard part; the real challenge is dealing with the emerging questions, such as: How do I start the conversation? When should I do it? How can I minimize potential damage to our relationship? Who should deliver the message? How will my fiancé react?

Facing these questions beforehand can prevent most prenup fatal flaws, which can be narrowed down to three main culprits: timing, pacing and purpose. Prenup requests that are ill-timed, ill-paced or ill-purposed can be devastating. To help minimize the negative effects of asking for a prenuptial agreement, here are the top 12 fatal flaws that should be avoided:

TOP 12 PRENUPTIAL FATAL FLAWS

1. Surprising your fiancé with the paperwork to sign, with no prior conversations or discussions
2. Springing the request on your fiancé close to or on the wedding date
3. Using the prenup as a weapon or a power source

4. Making it coercive: all or nothing
5. Being self-serving by asking your fiancé to sign one and refusing to sign one yourself
6. Assuming that the only reason for one is a lack of trust or confidence in the relationship
7. Having your parents be the messenger, even if they are the drivers of the prenup
8. Aligning against your parents if they request one
9. Assuming you don't need one and that a trust will protect all ownership issues
10. Under-disclosing your assets, income and/or resources
11. Lack of legal representation on both sides
12. Avoiding any and all conversations about finances, money, resources and assets

Because of the unknown reactions to the request, the decision to discuss a prenuptial agreement is often avoided and delayed.

Avoidance often plays a big part in these fatal flaws. Because of the unknown reactions to the request, the decision to discuss a prenuptial agreement is often avoided and delayed. As the wedding gets closer, the pressure to complete one builds, when emotions are already high. And, because prenups are often associated with divorce, emotions that are supposed to be all positive and lovey are now replaced with anxieties, because nobody wants to convey even an ounce of skepticism or doubt about the longevity of the marriage right before the wedding.

Regardless of who decides to implement the prenuptial agreement, if it is done close to wedding, there is a good chance it will be met with resistance and evoke a negative emotional reaction: "How dare anyone think that this marriage won't last forever! After all, our love is different!" Or, as with Cindi above, "You don't trust me! Why are we getting married?" Some states do not even recognize a prenup signed too close to the day of the wedding. Timing does matter.

As we heard from Cindi, though she doubted that logic would have prevented her from having an emotional response to her fiancé's prenup request, she felt that had she known why her fiancé was asking her to sign a prenup, along with his plans to make sure that she would be well taken care of, his request could have yielded a better reaction.

What could her fiancé have done that might have made Cindi's reaction better? Here are four steps that we have found to help couples and families make the prenup experience more successful.

A prenup is a deliberate and conscious decision before marriage about how distributions will be divided.

FOUR STEPS FOR A SUCCESSFUL PRENUP

STEP 1 – Purpose

Be clear about the purpose your prenup will be serving. Prenups cover two primary areas: property and support in case of death or divorce. How will property be divided and how will support and/or support payments be made?

Know your purpose! Are you protecting family assets that have been around for generations? Do you see these assets as the family's and not your own? Are you protecting company stock ownership? Are you entering into a blended family relationship where you want to designate how assets will be divided amongst the two families, ensuring your children and your new spouse are taken care of in a way that is meaningful to both of you? Do you have a mission, purpose or vision that aligns your personal values with how you want your assets allocated? Is your level of wealth and your fiancé's significantly different? Do you want to outline how your new spouse should be taken care of should something happen to you? Are you clarifying what support and/or support payments would look like? Whatever the reason, each party needs to have a clear understanding of the prenup's purposes.

In blended family situations, especially when adult stepchildren are involved, prenuptials are often useful to clarify your wishes for how you would like your children to be taken care of as well as your plans to take care of your new spouse. Your fiancé may fear that should something happen to you, all money and assets would go to your children, leaving your new spouse and your spouse's children with nothing. Children often fear the opposite, that the new spouse will receive all of the assets, thus creating a void in their need for comfort and security.

You can provide comfort to all by discussing expectations, sharing your plan and highlighting how you would like to take care of your new spouse as well as your children. You might agree to make adjustments to your plans the longer you are married. Provisions in the document can allow flexibility or even renegotiation, phase-ins or a sunset provision after a period of years. For example: "If something happens to me during the first five years of marriage, I'll make sure you have enough to…After five years, I'll increase the amount by $___ or ___%. After 25 years…"

Another purpose that a prenup serves is to preempt the state's defaults. In a sense, there is always a prenup of sorts in effect, based on your state's defaults around marriage. By doing a prenup, you are deliberately and consciously making premarital decisions about the eventual division of your assets after the marriage, rather than leaving this to the state to decide for you. All people involved in a prenup agreement are advised to know their state's default rules and what they are negotiating or preventing at the state's level.

Couples and parents of couples often assume that having a trust will protect all ownership of assets. What they often miss is that once a distribution is made, it is no longer protected by the trust. A prenup is a deliberate and conscious decision before marriage about how these distributions will be divided.

If your parents or the family's governance system requires a prenup, spend the time to understand why your family put such a policy in place and what values it supports. Seeking to understand and hear your family's stories will help you and your fiancé support and stand behind the requirement.

When you and your fiancé are from differing socioeconomic strata, having this conversation with both your parents and your fiancé can be extremely beneficial. It gives your parents the opportunity to tell your fiancé that they are happy for the enrichment your fiancé will bring to the family. And your fiancé can acknowledge the risks and opportunities involved in marrying into money. It can also be beneficial to have a conversation with your fiancé's parents, so that they understand the prenup's scope and intent.

The prenup conversation should allow adequate time for multiple discussions and negotiations.

STEP 2 – Timing

Now that you know the purpose behind your prenup, realize that timing is everything. A prenup is best discussed, delivered and executed months before the wedding date. Remember, some states will not recognize a prenup signed too close to the day of the wedding. The prenup conversation should allow adequate time for multiple discussions and negotiations. Also, attorneys may not be on the same expedited schedule as you. Allow time to seek mutual agreement and understanding. When it comes to negotiating prenups, the further in advance of the wedding, the better.

STEP 3 – Approach

Be aware of whether you are approaching the prenuptial agreement from the perspective of divorce or death. It often can help reduce the stress if you position the prenup as a discussion of what will happen upon death of a spouse, rather than just a discussion about divorce. Again, a prenup is intended to produce comfort and security, not fear and doubt. Take this opportunity to be transparent about why and how you want to approach the prenup agreement. This is not the time to be secretive. According to Jim Linnett, Wealth Strategist at Ascent, "It is better to over-disclose than under-disclose."

When discussing the terms of the prenup, here are some things to consider:

- Both sides must have an equal voice.
- Both sides must have representation and complete disclosure.
- Both sides should be fair and willing to negotiate.
- Both sides should sign a prenup, no matter the size or inequity of the assets.
- Some couples may choose to use professional mediators (one party that works with both to come up with a solution) and then give the points or draft document to separate attorneys.

When done well, prenup conversations can enhance mutual support and understanding.

- The wealthier fiancé may consider making a gift to cover the other fiancé's legal fees rather than paying them directly.
- Consider having provisions in the document that allow flexibility or even renegotiation, phase-ins or a sunset provision after a period of years.

Consider appropriate legal representation, which we believe is an integral part of the approach to successful prenups. In fact, some states will not recognize or enforce a prenup if proper representation was not present on both sides. In any case, lack of representation may support a challenge later. With both parties having legal representation, it allows the lawyers to conduct the negotiations. The lawyers become the intermediary on each person's behalf, allowing the couple to depersonalize the process. When selecting lawyers, seek out good negotiators and estate planners, ones that look out for the best interest of the couple, and ones with a high degree of emotional intelligence. Avoid cut-throat divorce lawyers when you're trying to achieve mutual agreement!

STEP 4 – Communication

Although most individuals dread doing so, talking with your loved one about putting a prenup in place is critical to its overall success. Typically what couples are looking for in a prenup is comfort in knowing that each person is going to be "taken care of" financially. It is equally important to take care of one another emotionally. What does "taken care of" mean? How can that comfort be provided? Talk about it!

The prenup discussion should be a mutual meeting of the minds, seeking to understand one another. When done well, prenup conversations can enhance mutual support and understanding. Paul Hood, estate planning attorney and current Director of Planned Giving at the University of Toledo Foundation, recently stated, "Prenups are a means of taking the relationship to a deeper level."

Make time for your fiancé to express her/his concerns and wishes in a supportive, non-legal conversation in which plenty of discussion can occur. Make time to listen to all sides and do check-ins to be sure you understand. Repeat back so each of you can hear what your message sounds like. Create a safe environment where each of you can clarify your message and come to a mutual understanding or, better yet, agreement.

The prenup should not be the focal point of your financial discussions. Place the prenup discussion within a larger discussion of the other kinds of financial and wealth discussions you need to have with each other. This would be a time for full disclosure about assets, income, resources, attitudes and philosophies about money. It might be helpful to have the parents of both parties involved in a larger conversation about assets.

Couples do well to learn early in the relationship how to openly discuss difficult topics such as money, estate planning and death. In fact, even if a prenup isn't in the picture, I highly recommended that all couples work through Susan Piver's book, *The Hard Questions: 100 Essential Questions to Ask Before You Say "I Do."*

Ascent is not advocating for or against the decision to implement a prenuptial agreement. That decision is yours and your family's to make. We do, however, want the experience to be successful should you decide to move forward with one. To assist you in this endeavor, try to avoid the fatal flaws outlined above and then think through how to best execute the four steps outlined for a successful prenup. There is no guarantee that taking these steps will prevent a future problem, but they may help give you a fighting chance to successfully work through it. And, as suggested above, you can use a prenup conversation as a means to deepen your relationship.

Amy Zehnder is a certified executive coach with a degree in industrial and organizational psychology. As a strategic wealth coach at Ascent Private Capital Management of U.S. Bank, Amy often facilitates workshops on the impact of money on family members, family values, communication, decision-making and money as a taboo topic.

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