

WHY **PRENUPS** ARE **ON THE RISE**

More and more couples are deciding they need a **PRENUPTIAL AGREEMENT**—so why isn't anyone talking about it? Alexandra Kirkman reports

SURE, LOTS OF CELEBS HAVE PRENUPS, but so does your coworker, and maybe even your college roommate. Though many view the increasing popularity of prenups as a sign of the times, others think they're unromantic—and some even believe they indicate that a marriage is doomed. Though opinions run the gamut, one thing is certain: People don't like to talk about them. In our special report, *MODERN BRIDE* asks couples and experts to open up about this controversial topic.

Brandi Gaither, 24, a school psychologist from Wabash, IN, was apprehensive about broaching the subject of a prenup with her fiancé, Bill Buffington. "I didn't want him to think I wasn't taking the marriage seriously, or I thought it wouldn't last," she says. She had an inheritance she wanted to protect and thought it was the practical solution. Bill, 29, admits he was shocked. "I'd thought about it myself, but when Brandi brought it up, I kind of thought, 'What the hell is this?'" he says.

But after mulling it over, he realized that the idea also made sense for him, given that he's the executor of his family's estate, which includes substantial real estate holdings. "I'm not just looking out for myself, I'm responsible for family members who are counting on this inheritance," he says. "I also realized that a prenup means one less thing to fight about if something goes wrong."

Brandi and Bill, who are marrying in December 2005, are presently negotiating their prenup, and Brandi admits it's been a bumpy ride. Bill's family has made requests of their own, such as antiques they want to remain in the family. "It's a touchy subject," says Brandi. "I felt a little funny at first when Bill's family said there was stuff they wanted to add in." But she says the benefits far outweigh the slightly bruised feelings that may arise during the process. "It makes you talk about a lot of things, like finances and plans for the future, that people don't talk about until after they're married," she says.

Brandi and Bill are part of the trend: the burgeoning popularity of prenuptial agreements with "ordinary" people across the country. "Today everybody in America should have a prenup, because everybody has prospects," says Raoul Felder, the renowned divorce attorney whose clients have included Rudy Giuliani and Donald Trump. "Prenups are not just for the rich anymore."

Statistics on divorce indicate there's good reason to consider a prenuptial agreement. According to the U.S. Census Bureau, the number of divorced people in the country more than quadrupled between 1970 and 1996. Today, the national divorce rate is holding steady at about 50 percent. Given such grim figures, a growing number of couples are realizing that smart planning

now means fewer headaches later, if "till death do us part" doesn't hold true. Other societal trends (people marrying later in life and an increasingly educated, aspirational population) mean more people are entering into matrimony with assets they intend to protect. "We're seeing many more prenups among young people, normal people and first marriages," says Arlene Dubin, a partner in family law at Sonnenschein Nath & Rosenthal in New York and author of *Prenups for Lovers* (Villard). "They're becoming mainstream."

And yet, prenups are not a topic people discuss around the watercooler. "Having a prenuptial agreement is like having a demented relative who lives in the attic—nobody wants to talk about it," says Felder. Statistics on prenups are scarce, in large part because they're private documents that aren't registered with the court. Moreover, many prenups have what Dubin calls "shut-up clauses," which means they're completely confidential.

However, anecdotal evidence points to prenups being on the rise. Dubin estimates that 10 percent to 20 percent of couples in America now have a prenuptial agreement, and predicts that number will jump to 50 percent by 2020. "More and more people are putting off marriage, and when they do wed, they're coming to the marriage with property, and (continued on page 324)

(continued from page 323) ideas about managing their finances," she says.

Even so, the controversy remains. One reason is media coverage of ugly divorce battles, which often paints prenups as the domain of the rich and greedy, as in the case of Revlon CEO Ronald Perelman's bitter divorce from Patricia Duff. A millionaire herself, Duff went through more than 20 legal teams and a reported \$3 million in fees contesting her prenup with the billionaire. A recent poll about prenups on a wedding Web site provoked these responses: "Don't have one, not getting one, would refuse it, and I'd kill him dead if he asked for one" and "We are having one, but the entire experience was so awful that after it's signed, I don't plan to ever bring it up again." Sharon Schoppman, 29, of St. Charles, MO, says her friends can't believe she signed one prior to her September 2004 marriage to her husband, Mitch. "Most girls I talked to were shocked," says Sharon. "They said 'I would never, ever sign one, but if you want to, go ahead.'"

Mitch, 30, believes the stigma comes from the belief that a prenup means you're anticipating the worst when you should be focusing on the promise of a happy marriage. "People don't understand why you're entering into a marriage and already planning for if and when the marriage ends," Mitch says. He thinks that some who are fervently opposed to prenups may have ulterior motives, rather than romantic notions. "Let's face it, a lot of people marry for money," he says. "I think most people, in the event of a divorce, want their ex-spouse to be taken care of. But there's a big difference between being taken care of and living in Maui."

Sharon says that the nearly \$1 million in assets that Mitch brought to the marriage should remain his in the event of a split. "If I'd been beside him when he was working 80 hours a week, it would be different, but he did that on his own," she says. Her family was against the idea, but the Schoppmans held firm. "The reality is, half of all couples divorce," says Sharon.

A difficult divorce taught Elisabeth Dossey, 30, a wedding planner from Knoxville, TN, the value of a prenup. "My ex-husband left me bankrupt," she says. "He took everything we had." Now remarried to Randall, 31, Elisabeth wasn't put off by his request for a prenup before their 2002 marriage. "Randall has a very successful business that he spent 11 years building, so he was adamant about getting one from the beginning," she says. "I didn't have

Not all couples who begin negotiations end up with a prenup, as Dubin cites in the case of Paul* and Patsy.* Patsy felt strongly that a prenup was a demeaning, insulting notion, but Paul had amassed a \$350,000 stock portfolio that he wanted to protect for his children from a previous marriage. Paul had tried to convince Patsy that a prenup was a good idea for them, but he didn't want to force her to sign one, and she was unwavering in her refusal.

THE CONTROVERSY REMAINS, THANKS IN PART TO **DIVORCE BATTLES** THAT OFTEN PAINT PRENUPS AS THE DOMAIN OF THE **RICH AND GREEDY**

a lot of assets, but what I did have I worked hard for. I have no problem sharing it with the person I love, but if he splits, it's mine."

By the same token, Elisabeth says, "The assets Randall brought into the marriage don't belong to me. If I decide I don't want to be in this anymore, I'm not entitled to any of them." Her husband, who has two small companies and some real-estate holdings, felt the same way. The Dosseys' prenup stipulates that their home and the restaurant they recently opened together will be sold and the proceeds split down the middle should the couple divorce.

Elisabeth says the subject of prenups is becoming popular in her circle of friends. "I don't know a lot of people who don't at least discuss it," she says. Elisabeth says she's shocked when she hears of people who get upset at the mention of prenups. "I don't see the reason not to be prepared for anything—it's like saying you shouldn't buy life insurance because that's just preparing to die," she says. "The point is, anything can happen."

Instead, he decided to set up trusts for his children, using the money from his brokerage accounts—an idea to which Patsy was amenable. Dubin points out that though the couple ultimately decided against a prenup, the discussion was valuable because it helped them identify and resolve potential sources of conflict before they married.

Experts agree that negotiating a prenup can be a positive experience. "I tell people that a prenup is an exercise in getting to know each other," says Richard Ortoli, who practices family law in New York. "Sometimes the process is a bit bumpy, but that's good—it's a litmus test," says Dubin. "If you can negotiate these important issues, you're more likely to begin your marriage on solid footing."

Many people overlook the fact that prenups can provide protection to a spouse or child in the event of divorce or death, says Dubin. A prenup overrides a will, and can make provisions if there isn't a will. Linda,* 31, of Columbus, OH, has a prenup with her husband, (continued on page 326)

(continued from page 324) Bob,* 31, that stipulates, among other things, that his child from a first marriage will not be entitled to Linda's assets if something happens to her. "My family worked hard to build up assets; I want to make sure they're protected," she says.

The real beauty of prenups, experts say, is that they're flexible; there isn't a lot that can't be included. There are some simple rules experts advise couples to follow, however, when they sit down at the bargaining table. First off, full and fair disclosure of assets, debts and loans is key. Second, make sure you get the prenup out of the way well in advance of the big day. Finally, though it's not unethical for one lawyer to represent both parties in negotiating a prenup, it's better for both sides to each have a separate attorney. "Having

one attorney can be grounds for setting aside the agreement," Felder says.

Beyond that, the sky's the limit as to what can be included—but it's in the couple's best interests to be reasonable. Bob Naschin, a divorce lawyer in Los Angeles who represented Barry Bonds in his landmark prenuptial case (see below), recalls an agreement that gave the wife \$10,000 every time her husband watched more than one football game on Sunday. Felder recalls one prenup in which a spouse promised not to practice Christian Science. Getting such demands to stand up in court is tricky. "[Stipulations like]: I will walk the dog, you'll do the dishes, we'll have sex at least five times a week, etc., make people feel great," says Felder. "But no court is going to enforce them." Dubin tells clients to stick

to property concerns. "Once you start muddying the waters with lifestyle issues, you risk attenuating property provisions," she says.

Perhaps the most compelling argument for a prenup is that it allows two people to decide what's in their own best interests should their marriage fizzle. "If you get married without a prenup, you're basically saying 'I do' to the laws of the state," says Dubin. She notes that though judges try to be fair, there's a tremendous amount of discretion in terms of who gets what. "Judges have their own biases and value systems," she says. "Isn't it more romantic to create your own personal agreement based on what you think is best for each other? And isn't it better to do it when you're in love, rather than when your relationship is at a low point?" ■

HIGH-STAKES HOOKUPS

When stars wed, the union often seems more like a corporate merger, with lawyers, contracts, etc. But the stipulations made in celeb prenups are more interesting than any made in a boardroom. Check out these juicy tales of love and woe.

Barry Bonds and Sun Margreth The San Francisco Giants slugger had his first wife sign a prenuptial agreement hours before their Las Vegas wedding, forgoing her right to half the riches he'd earn during their marriage. At the time, Bonds was making about \$107,000 a year. When the couple separated, Bonds was raking in about \$8 million a year, so it's not surprising that Margreth contested the contract. Even though she had no lawyer present when she signed the prenup, the California Supreme Court declared it valid, leading to stricter standards on prenups in the state.

Russell Crowe and Danielle Spencer Before the Aussies wed, they reportedly signed a prenup that will give Spencer \$15 million if the couple are married for at least three years. Each child born to the couple will get a trust worth \$3 million. Crowe is to keep the 800-acre ranch where they married, but Spencer will get the \$8.25 million penthouse in Sydney.

Michael Douglas and Catherine Zeta-Jones Should the Welsh beauty and the debonair Douglas divorce, Zeta-Jones will reportedly receive \$2.8 million for each year of their marriage.

Another reported prenuptial provision: a "stray and pay" clause, which says Zeta-Jones will receive \$5 million if the confessed recovering sex addict cheats on her. (Though according to one report, Douglas ceremoniously tore up their prenup.)

Kevin Federline and Britney Spears Their September wedding wasn't immediately legit, thanks to a holdup with the prenup—reportedly Federline wasn't happy with the \$36,000 per year he'd get should the couple split. Now he'll get \$300,000 a year for half the tenure of their marriage. The prenup also reportedly stipulates that all wedding gifts valued at \$10,000 or more must be accompanied by a legal document outlining who is to keep the gift in the event of divorce.

Paul McCartney and Heather Mills The former Beatle, worth over \$1 billion, refused second-wife Mills's offer to sign a prenup before their extravagant 2002 wedding—reportedly much to the horror of his children. Further fueling speculation of a rift between Mills and the crooner's kids, Mills didn't wear a wedding dress by McCartney's fashion-designer daughter Stella.

Steven Spielberg and Amy Irving When their marriage ended in 1989, rumors swirled that Spielberg's feelings for now-wife Kate Capshaw were to blame. Irving fought their prenup, which was scribbled on a napkin, on the grounds that she hadn't had a lawyer present. She walked away with \$100 million.