

For Richer or Poorer, Unless We Get Divorced

Prenups seem heartless, but they can make sense even for couples in love. Not for you? There are alternatives.

When Revlon chairman Ronald Perelman and actress Ellen Barkin made headlines with their prenuptial agreement recently, it was familiar: another famous bazillionaire couple who, it appeared, put money before love. But no more are those pieces of paper the sole province of the rich and famous, and no more are they just for people with no faith in their own marriages. In many circles today, a prenup is

considered part of any good asset protection plan, like a will or power of attorney, not merely a Plan B for people who aren't sure they trust their spouse.

Today's prenup candidates are not only traditional ones—people entering second marriages who have children, retirement accounts, homes or businesses they want to protect. They're younger folks who've waited a little longer to get married and have accumulated substantial assets in the meantime, and they are people whose parents have done well enough to put the prenup question into play (think inheritances). A prenup can also help you avoid inflicting your credit-card, student-loan or other unsecured debts on your love.

But let's face it: It is, at least in part, a safeguard against being taken to the cleaners in a divorce, and the high national divorce rate appears to have triggered a minor boom in the prenup market. No one knows how many prenups exist, in part because they don't



have to be filed anywhere—they're simply contracts between two individuals, signed before marriage, that specify how assets will be distributed when the marriage ends, in either divorce or death. But at the Equality in Marriage Institute (started by Lorna Jorgenson Wendt with settlement money from her divorce from former GE Capital CEO Gary Wendt), inquiries about prenups climbed from 1,500 a month in 2003 to 4,000 in 2004 to 5,000 last year. Arlene Dubin, author of *Prenups for Lovers*, estimates that up to 10% of couples on their first marriage and 20% of couples on subsequent marriages have them. Famed matrimonial attorney Raoul Felder says, confidently, "Everyone needs a prenup."

• Isn't It Romantic?

I disagree with Felder. (I suspect his passion is fueled by the roughly \$1,000-and-up cost of a prenup.) I do believe, however, that everyone headed to the altar pondering their estate plan should at least consider one. States have rules on how assets are divided if a marriage ends. A well-written prenup allows you to make your own.

There are alternatives, of course, which I'll get to in a moment. But first, one point that's often missed: Prenups can come in just as handy in case of death as they do in a divorce. States can stipulate the mini-

\$PLIT! As Jessica Simpson and Nick Lachey learned, even storybook couples can benefit from prenups. But a MONEY poll found that most of us don't want to broach the subject.

43%

who don't want a prenup say it's because they never plan to get divorced.

5%

say it's because they couldn't ask their spouse for a prenup even if they'd like to.

SOURCE: MONEY/MOR poll of 600 adults, Feb. 19-19, 2006. Margin of error: plus or minus 3.0%.



mum your spouse gets upon your death. You may not want yours to get the full allotment (perhaps there are already children in the picture) or you may want him or her to get more. Regardless, wills are one-sided documents that a spouse can change without the other's permission, says Dubin, who works as a matrimonial attorney in New York City.

A prenup, on the other hand, is a legal contract that you and your spouse sign.

Any questions?

Q HOW DO I RAISE THE TOPIC? Gently, and well in advance of the wedding. The conversation will likely be uncomfortable at first—it's not inconceivable that more than a few engagements have ended over the subject's being broached. If you've been divorced, say you're gun-shy. Use the news (Perelman and Barkin, Jessica Simpson and Nick Lachey), blame your accountant (not your parents) or say you read it here. Truth is, you know your mate better than anybody. You'll know the best time and way to bring it up.

Q WHAT SHOULD BE INCLUDED? Only stipulations that are strictly related to

UNSCIENTIFIC SURVEY by Amanda Gengler

Would You Sign a Prenup?

We posed that romantic query on Valentine's Day at the Empire State Building



"We're not married, but we wouldn't need a legal agreement to talk about money."

—Britney Lasater (with Edward Vandergucht), Paris



"We've talked about it and don't think we are going to. We're at the same levels in our careers and make the same amount of money."

—Christine Costa (with Ed Egan), Kansas City, Mo.



"It never entered our minds. He basically handed me everything and said to give him some every once in a while."

—Jennifer (with Steve) DeWaters, Bedford, N.H.

property will be enforceable in court every time. Don't get caught up in the latest twist in prenups: including items not related to assets or liabilities—everything from who will walk the dog to how much weight gain will be tolerated to so-called no-diaper clauses about whether or not the couple will procreate.

Q THIS ALL SOUNDS A TAD COLD-BLOODED. ARE THERE OTHER OPTIONS?

Yes. There are post-nups—essentially a prenup for people who have already nupped—as well as trusts, which can move assets out of an individual's estate so that they won't be considered marital property before the wedding. Also, you can simply avoid mixing specific assets in the first place. (But as you'll read, these options can be complicated.)

Q WHEN DOES A POST-NUP MAKE MORE SENSE?

Generally, if you're already married. Remember: The closer to the wedding date, the easier it will be for a lawyer to argue after the fact that one spouse coerced the other into signing a prenup, so if the invitations have gone out, you could consider a post-nup. Also think about one if your situation has changed—for example, one of you has received an inheritance or the other has a child from a prior marriage who's developed special needs.

Q I LIKE THE SOUND OF TRUST BETTER THAN PRENUP. HOW DO THOSE WORK?

Estate planning attorneys have an entire menu of trusts they can draw up to move premarital assets out of one spouse's estate so they never become part of the marital union. The only problem is, the other spouse might not know what's being sheltered. When they're used in that way, I find trusts sneaky and underhanded. If the object is purer—to provide for a child, for instance—a well-executed prenup or post-nup will do the same thing.

Q WHAT ABOUT JUST KEEPING THINGS SEPARATE?

Not mingling certain assets from the get-go can work. This is fairly easy if you bring a savings or brokerage account to the marriage and don't touch it. But if you bring a house, things can get dicey, says Dubin. It may be bought and paid for, but if five years from now the non-owning spouse spends a few weeks working on the deck, suddenly he's contributed to the value of the property. An attorney could argue it's now a marital asset. That may bring a legal challenge if—and I hate to even bring this up—you get a divorce. **\$**

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CLIFFS AND SUNSETS

If you believe the gossips, Ronald Perelman and Ellen Barkin are divorcing because their prenup has a cliff vesting schedule: He can give her far less than he'd have to if they'd lasted until a preset date. Variation: the sunset provision, which nullifies the prenup after a certain day. Steer clear of both—a cliff encourages you to time the end of your marriage. (If you're stuck on this, use increments so there's no one day that makes more sense.) As for sunsets, "It's like saying, 'If you can make it 10 years, I trust you enough to give you access,'" says Courtney Knowles of the Equality in Marriage Institute.

