

Timing is Best Wedding Gift for Prenuptial Agreements

By

As I have written in the past, for all of us family law practitioners wedding season equates to prenuptial agreement season. While we prefer to begin the process of negotiating and drafting those agreements several months prior to the special day, we often receive these calls only a few weeks before the wedding day.

In some instances, it is possible to accommodate a client's request to complete an agreement in this abbreviated time frame. In others, it is practically impossible, based on the busy schedules of the other attorney and the parties themselves, and the complexity of the issues to be addressed in the Agreement. While a prenuptial agreement is certainly not appropriate or necessary for every marriage (*that sure sounds like a subject for a subsequent blog*), in those situations where it is indicated, it is certainly not advisable to wait until the 11th hour to begin the process. Would a bride and/or groom hold off that long to select a venue or caterer or choose a wedding dress ?

I often represent the party who has not requested a prenuptial agreement, but has been asked for one by his or her fiancé. In the case of a younger couple, the prenuptial agreement is often at the suggestion (*or more often, the insistence*) of one party's parent who wants to make sure that their assets and wealth remain in the family in the event of divorce and do not go to the spouse. In many cases - and for reasons I don't understand - there seems to be a sense that drawing up an agreement is a simple matter, resulting in it being put on the back burner until a short time before the wedding.

What I often discover in reviewing the proposed agreement, however, is a very broadly-worded document which provides for complete waivers of all rights of support and disposition of property in the event of divorce or death. It stipulates that during the course of marriage the husband's and wife's finances shall remain completely separate and that there will be no financial partnership of any kind. Such provisions are likely to make sense in the case of an older couple marrying for a second time who have children from prior relationships, don't plan to have children together and who each has accumulated assets over the course of their lives and developed a career or at least independent means of support. They rarely are appropriate for a couple in their late 20's planning to have a family together and with both parties just getting started in their respective careers. There is a much larger period of future uncertainty for this young couple than exists for the older couple entering a second marriage.

When faced with an agreement that contains such broad waivers, I often recommend that my young client not enter into such an agreement without significant modifications to the proposed terms. The attorney who drafted the agreement often seems perplexed that it is not acceptable, forcing him or her to go back to their client (*or often their client's parents*) to explain why the agreement is not going to be signed as drafted and that some negotiation of terms is necessary. If the prenuptial agreement process is commenced far enough in advance of the wedding, there will be sufficient time to do so. If the parties have waited to the last minute, the negotiations can continue until the few days before the wedding.

That scenario is obviously less than ideal. The bride and groom should be enjoying the final preparations leading up to their wedding, but instead are faced with the potential acrimony of being on opposites sides of a negotiation only days before planning to commit their unconditional love to one another. If it's true that timing is everything, couples should give themselves plenty of it to discuss and determine the specifics of a prenuptial agreement.