

LAST CHANCE SEMINAR

WAR STORIES FROM THE TRENCHES: THE BEST WAY TO PREPARE YOUR CLIENT FOR A SECOND MARRIAGE WITH A PRENUPTIAL AGREEMENT

It was a Monday morning. The smell of coffee hung in the air as the office began clicking to life- aaaaah the sound of the telephone ringing and appointments being made. My 9:00 a.m. client appointment was right on time. I welcomed him and ushered him into the conference room with my rescue dog Opal in tow.

“What can I do for you this morning?” I asked in my perkier, most pleasant voice, as if I were not completely exhausted and worn out after 30 years of a domestic relations law practice.

He smiled congenially and said that he was getting married for a second time and wanted me to review a prenuptial agreement that his fiancé’s lawyer had drafted.

“Now, let me get this straight,” I said. “You have already been married once before, correct? And you went through a divorce already, right? AND YOU WANT TO GET MARRIED AGAIN???? AND POSSIBLY GO THROUGH THE HORRORS of the war again? Are you completely out of your mind? “

He sat back in his chair, and I saw the look of fear on his face. Fear of ME, not fear of the marriage, mind you. Clearly I was not getting through to him. So I tried another tactic.

“Don’t you remember what you looked like after you went through your last divorce??” I dug through my files, and found what I was looking for. His exit interview picture with the firm.



“Well, this one is not like my last wife,” he began to explain.

I tried another tactic. Ok, let me explain what signing a prenuptial agreement means. Basically, it means that your spouse can bring hookers into your home and do all kinds of things with them in your home and there’s nothing you can do about it apart from what this agreement says. If you waive your right to alimony and an equitable distribution of assets, then your spouse’s misconduct during the marriage means nothing and it won’t even be considered. How does that sound?

Still, a blank look on his face.

“Listen, Mister- I understand that going through a divorce is like childbirth. You forget the pain. You have forgotten everything you told me at our exit interview. Let me remind you what you said at that time.” I pull my notes and begin reading. “You said, and I quote (with apologies to Heather Land):

“I would rather slide naked down a razor blade into a bucket of alcohol than go through that again.”

“I would rather run out of toilet paper on a first date after eating Mexican food than go through that again.”

“I would rather work the assembly line at Krispy Kreme two days after gastric bypass surgery than go through that again.”

“I would rather listen to Gilbert Gottfried read me nursery rhymes while I am falling asleep than go through that again.

He’s looking a bit uncomfortable now.

Ok, fine. I can see that you are hell-bent on getting married. AGAIN. I can see that you are going to sign a prenuptial agreement. Then let me tell you some horror stories of clients who signed prenuptial agreements so that you won’t become one of them either. Because I don’t want you reverting to the look you had after your last divorce. My eyes just can’t unsee that, you know.

First case is Mr. X. A very wealthy divorced man, who was in his late 60s when he met Jane, a younger, attractive woman. Jane set her sights on Mr. X, and developed a clever plan to get him. She said all the right things. She told him she loved spending time with him at his family cottage in the middle of nowhere on weekends. It was her favorite place to be, in fact. She told him that she would

travel with him. She told him that she loved him and would take care of him and painted the picture of perfect marital bliss. He was hooked. He proposed.

Mr. X's lawyer told him that he needed a prenuptial agreement. His lawyer drafted a routine prenuptial agreement and presented it to Jane, who consulted her own attorney as is required for the same. Jane told Mr. X that she wanted a paragraph in the prenuptial agreement to protect her in the event Mr. X predeceased her. She didn't want to be kicked out the house when he died, and felt like she should be awarded 50 % of the equity in the house if Mr. X died. The house, which was designed and built by Mr. X prior to the parties' marriage, had a fair market value of approximately \$1,000,000. The mortgage was \$700,000, leaving an equity at the time of the marriage to be \$300,000. A wealthy man, Mr. X did not think giving Jane what at that time would have been \$150,000 in equity was too much to ask.

The relationship lasted about 1200 days. On those days and nights the parties almost never argued; they dined at nice restaurants regularly and Jane would serve dinner to Mr. X on a tray quite often. She cared for the house and the laundry and the yard. She managed the finances. She would sleep cuddled next to Mr. X essentially every night of the marriage even the night before presenting divorce papers. She would do all of these wonderful things on essentially every day of the marriage.

On the same days Jane was busy extracted money from the joint account 344 times, to deposit into an account in just her name, or to pay off debts that she had hidden from Mr. X. On the same days she coordinated her exit strategy with lawyers and family. On the same days she hid the money movements, and never did she disclose any of these actions to Mr. X. So on the same 1200 days that she was currying her husband's favor with something wonderful she was also executing a plan to extract a significant portion of the value of his life's work.

The most brilliant move she made was to encourage Mr. X to pay off the mortgage early. He completely forgot about the prenuptial agreement and the effect this move would have on him if he divorced. In fact, paying off the mortgage early seemed like the right thing to do for a couple approaching retirement. During the short marriage Mr. X moved approximately \$700,000 from protected premarital funds, and paid off the mortgage, unknowingly allowing her to claim 50% of that value. The mortgage was satisfied in full in December. In June, Jane walked into Mr. X's office, closed the door behind her sat down and repeated well-rehearsed words "You and I have been unhappy for a long time so I had my attorney prepare a settlement agreement for your review." Mr. X had no idea that they had been unhappy for a long time. In fact she never said a word to him about it before. He had quite the fight on his hands to keep Jane from walking out the door after 1200 days with about \$1,000,000 more than when she crossed the threshold as a bride.

Second case is Mr. Y. Mr. Y meets Jill, who also says all the right things. It was the second marriage for both, and a prenuptial agreement was entered in which each party was awarded his or her premarital property. The parties agreed to sell their respective residences that they owned before the marriage and purchase a new residence together with the proceeds from the sale of each residence. Mr. Y believes Jill intends on selling her home, and that she intends to contribute her proceeds to the

new joint home for the parties. So he goes ahead with the “plan” and sells his home contributes the proceeds thereof to a home titled in both parties’ names, and in which both parties’ lived. He thinks Jill will soon get her house on the market too and contribute the proceeds to the marital pie. He forgets all about the prenuptial agreement and the effect his actions will have in light of the same if the parties divorce. After she moves into the new home, Jill has a change of heart and decides not to sell her home as she promised to do. Thus, the new house is titled in both parties’ names, and Jill, having contributed nothing to the equity, is nevertheless entitled to one-half of the equity pursuant to the prenuptial agreement. Jill was able to keep her home and get half of Mr. Y’s premarital home as well.

The last cautionary tale of is Mr. Z’s story. He falls in love with a beautiful blonde hairdresser that we will call Joy. She says all the right things; they go to pre-marriage counseling, and Mr. Z believes they are on the same page. Mr. Z is wealthy. He insists on a prenuptial agreement. Joy says no problem! I will sign anything because I love you so much! The prenuptial agreement says that each party retains ownership of assets titled in their individual names. It provides that each party pays debts held in their individual names. It states that any assets titled jointly will be split equally in the event of a divorce.

Soon after the marriage, they find an expensive house they want to buy. They sign a contract to buy the house titled in both names. They go to the bank to get a mortgage, and the banker tells Mr. Z that because of Joy’s poor credit she cannot be on the note or they will not qualify to get the loan. No problem says Mr. Z, we can get the note in just my name.

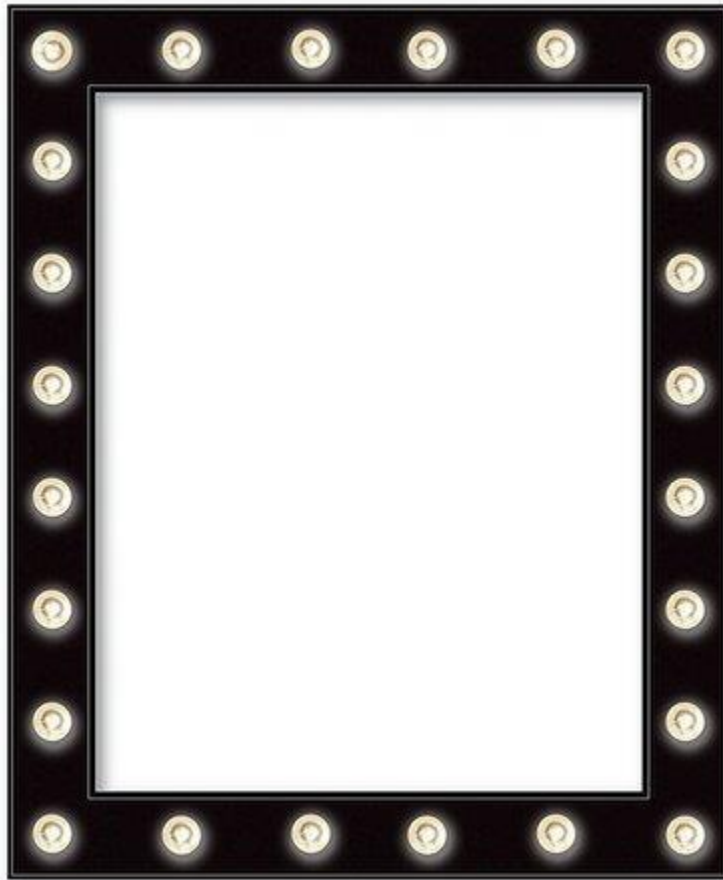
And in the middle of the night, it hits him: if they divorce, because the house is titled in BOTH names, but the debt is just in HIS individual name, she’s going to make out like a bandit. He puts the brakes on everything and insists that if they go through with the purchase of the house, a modification of the Prenuptial Agreement is executed to provide that notwithstanding anything to the contrary, if the parties divorce, the EQUITY in the house will be split equally, even though the debt is just in Mr. Z’s name.

So, in light of these horror stories, I have changed my method of preparing my clients who enter into prenuptial agreements. The issues that arrive rarely involve drafting problems. Instead it is because the parties sign the prenuptial agreement and NEVER LOOK AT THEM AGAIN as they go about making investments to see what effect, if any, the prenuptial agreement would have in light of their contemplated actions. I tell them these horror stories. I show them Mr. X’s exit interview picture. I want that picture popping up in their minds whenever they are making a financial decision that may be affected by the prenuptial agreement. I tell them that they should look at the prenuptial agreement before signing any contract to purchase real estate with their spouse, pay off mortgages, or do ANYTHING with premarital or inherited property.

I tell them that the most important paragraph in the prenuptial agreement is that amendments and modifications of the agreement must be written and executed in the same manner as the agreement. And that if a financial move is going to cause problems in light of the existing agreement

then they should make amendments to ensure it does not if they want to go forward with that financial move.

When I draft a prenuptial agreement I always present the signed original in marquee pre-lit frame so that they will cannot just tuck it away somewhere, because OUT OF SIGHT IS OUT OF MIND.



At the holidays, I send my prenuptial clients cards that say “Happy Holidays! Best Wishes for the New Year! And most importantly, don’t be a chump, check the prenup!”

On the client’s birthday I send a card that says “Happy birthday! Yo, wassup?! Remember the prenup!”

On Valentine's Day, I send a DVD of the movie The War of the Roses with just a note that says "I know you think she's cute as a pup, but don't forget to CHECK THE PRENUP!"

It's the little things that keeps them coming back.