

**By Matthew Crider, JD  
Family Protection Attorney**

Valentine's Day: That heartfelt time of rings, romancing and oh-so-many wedding proposals. And a day when three little words just might be whispered in your ear.

No, not *those* three little words. The I-love-yous aside, we're talking these: a prenuptial agreement.

As the busy summer wedding season approaches, this Sacramento Divorce Lawyer thinks it's a good time to consider a document with a decidedly ominous reputation.

It sounds so unromantic, but the negative connotations come from celebrity cases, the ones that go bad. Like that of San Francisco Giants baseball player Barry Bonds, whose last-minute premarital document was contested all the way to the California Supreme Court.

Or the current, contentious case of Los Angeles Dodgers owners Frank and Jamie McCourt, whose prenuptial agreement has been at the heart of the couple's multimillion-dollar divorce.

In fact, the term has become so synonymous with loveless legalese that many family law attorneys prefer to call them "marital agreements," which is more positive.

Nationally, the number of couples signing prenuptial agreements appears to be growing and the economy could be a factor.

In a survey of American Academy of Matrimonial Lawyers (AAML) members released last September, 73 percent said they've seen an increase in so-called "pre-nups" during the past five years. Also, 52 percent reported more women requesting prenups and 36 percent said pensions and retirement benefits are more commonly cited.

Stephanie Barber, a claims analyst with the State Compensation Insurance Fund in Sacramento, said she and her fiancé drew up a prenuptial agreement prior to their marriage four years ago "because I had a vested retirement and savings and he had a home with a lot of equity. It was so simple and it separated the financial from the emotional."

Unfortunately, the marriage didn't last, but the couple's prenup, Barber says, made the divorce amicable enough that "we're still friends."

## **Who needs one?**

If all you have is an apartment and a paycheck, then you probably don't need a prenup. But if you have real estate, a business, children from previous relationships, then you do need one. It might be worthwhile for a couple to have a one-hour consultation with an attorney before deciding whether a prenup is needed.

Basically, a prenuptial agreement states your wishes for how your marital assets and debts would be handled, in the event of divorce or death. Some couples don't want to be bound by California's community property laws, which generally divvy up all assets and income earned during a marriage in equal portions. Some couples waive spousal support in case of divorce. Older couples with children from previous marriages, established businesses or complicated investments may want to spell out which assets go where, often as part of their estate planning.

Prenups are not an emotionless contract. Many divorce lawyers are advocates of so-called "collaborative" agreements, where a couple sit down, each with an attorney, to amicably devise a financial agreement that works for both sides. The emphasis is teamwork, not adversarial.

It can also be helpful to have a neutral financial planner or adviser on hand to discuss the tax implications and financial strategies that might be involved.

And while it's commonly assumed that prenups are only for the wealthy – who want to shield expensive homes, cars and bank accounts in case of divorce – that's not necessarily so, say family law attorneys.

Many people getting prenups now are blue-collar couples with modest incomes. The recession has driven more couples to seek out premarital agreements as protection from financial harm.

In one case, a middle-aged couple wanted a prenup because one had a clean credit history but the other had large amounts of credit card debt. Their prenup stipulated that each person's income and debts remain separate.

Another, a 20-something bride-to-be, sought a prenup to make it "abundantly clear" that her expected inheritance would remain her separate property. Even though inheritances

and gifts are not considered shared assets in a marriage, she and her parents didn't want any uncertainty in case the young marriage didn't last.

What's required in a prenup? It must be in writing. Both sides must wait seven days before signing. Each person must fully disclose all their assets and their debts.

In addition, if alimony or spousal support is involved, both sides should have an attorney's advice. And if one party's primary language isn't English, the prenup should be translated so there's no misunderstanding of what's in the document.

It's also recommended that couples review their prenuptial agreement periodically, especially after 10 years or so, to be sure the terms still suit their circumstances.

Perhaps the best outcome of a prenup is that it gets couples talking about their finances before saying "I do."

If a couple has a chance to talk about their expectations around money, they should be able to minimize conflict and surprises during their marriage. Financial differences are one of the major factors leading to divorce.

Some people think it's kind of crass to talk about money. But if two people have completely different ideas about how to handle their finances, the process of setting up a prenuptial agreement can actually generate harmony.

Ultimately, a prenup is insurance in case happily-ever-after doesn't happen.

## About Matthew Crider, J.D.

Matthew Crider formed [Crider Law PC](#) in 1999 so he could help individuals through the California divorce process by providing creative solutions as their trusted advisor and legal counselor. His divorce and family law practice focuses on assisting people in dissolution matters, including divorce, child custody and visitation, child and spousal support, spousal support and alimony, and parental rights.

