

A smiling woman in a blue jacket and a man in a blue jacket hiking up a hill. The woman is in the foreground, wearing a bright blue jacket and a brown patterned scarf. The man is in the background, wearing a blue jacket and a backpack. They are both holding hiking poles and appear to be enjoying their hike.

What Women Need to Know About Prenups

Divorce is never easy on anyone, but it's especially hard on the financially dependent spouse. Research indicates that women, who are most likely to be the financially dependent spouse, **carry the heaviest economic costs of divorce** and are at a financial disadvantage after separating from their spouse.

Given these risks — and the fact that roughly half of all marriages end in divorce — getting a prenuptial agreement is critical for any financially dependent spouse, says Frances Ross Nolan, attorney and founding partner at Nolan Byers, PC.

“People typically enter marriage with expectations of each other,” she says. “These expectations are seldom actually articulated and can become a kind of unspoken contract between the parties. If you don’t have a forum in which to discuss this unspoken contract, it’s pretty easy to find yourself in violation of the terms, which can lead to conflict and ultimately to the demise of a relationship.”

Hightower Advisors recently sat down with Nolan to discuss how women should approach prenups to protect their interests, assets and long-term security.

What’s the right process for writing a prenup?

I recommend the Collaborative Process, which is designed to elicit communication and to facilitate an exchange between the parties that can help them to better understand one another and can, when done well, enable them to enter into marriage with a clearer sense of their partner and an agreement they had a voice in creating.

Collaborative is different from the adversarial way of negotiating prenups. And although in my experience, it can yield much better outcomes, it is not yet the norm.

How does the Collaborative Process work?

First, everyone needs to sign a contract that essentially says, “We are going to negotiate this in a collaborative context.” This means we’re going to talk about the law and how it affects the facts in an open, transparent way. If the lawyers representing each spouse have a difference of opinion in how the law might intersect the facts, they must reveal that difference.

In these situations, we don’t necessarily use what the law says or what a court would do to make decisions. We talk about how to shape legally obligating terms to meet your goals and needs as a couple or family.

Who should sit at the table for these conversations?

Along with you, your partner and each of your attorneys, it is often a good idea to have mental health and financial advisors there. Part of what keeps people from negotiating their needs and interests is communication problems, and another part is a lack of understanding their financials. It’s also often useful to include an estate planning attorney, who can provide guidance related to wills and trusts.

What are the terms that couples should focus on?

Prenuptial agreements usually address three buckets of decisions: One, your financial expectations of one another during the marriage. Two, what happens if you divorce, and three, what happens if one of you dies. Your prenup can address one, two or all three of those areas.

For an unmarried couple, those must be difficult issues to discuss.

To me, it is very forward-looking and proactive. It is a very healthy step for couples to take. In a way, it's like premarital counseling, but it's very targeted. It also opens the door to communication in other areas. For example, it helps people see the need to sit down with a financial advisor.

What are some common mistakes you see in prenups?

People don't always think past five or 10 years. One of the saddest prenuptial agreements I ever saw was one that was signed by a couple before the husband built his wealth. The wife devoted her life to raising their children. Thirty years into the marriage, and after many years of unfaithfulness on the part of the husband, the couple divorced. Under the terms of the contract, the wife was left with virtually nothing.

What other issues should women consider when writing a prenup?

As a divorce lawyer, I've seen so many women give up their careers, education and best-earning years to raise children. Any woman who is about to stop working to stay home with kids, or to support a spouse with a demanding career, should consider negotiating a prenuptial or postnuptial contract beforehand. It is important to monetize both what you are about to give up and what you will be adding to the marriage by not working. Otherwise, you're probably not going to make up what you're giving up if you get divorced. If there are children, you will likely get child support. But women in this situation are seldom afforded sufficient support to maintain their previous lifestyle.

Another reason to initiate marriage contracts is to protect the interests of children from a previous marriage. If you stay married for your most productive financial years, the better part of your wealth may be deemed "marital" at the time of divorce, which could enable a spouse who is not the father of your children to have a greater interest in your wealth than your children.

If you own a business or have inherited wealth that you intend to live on, that's another very important reason to get a prenup.

Any other advice for women?

Value yourself. If you don't, why should someone else? If you accept an agreement that says you get nothing 30 years from now, you're probably going to get nothing.

The real power in negotiation is knowing your personal — not just financial — worth and being willing to self-advocate. If the terms for getting married are not consistent with the partnership that you seek in marriage, and if they are not consistent with the respect you deserve as a human being, it's not the right marriage, and you need to be able to walk away.

Finally, have your own life. Always have a career or a vocation, even if it's as a volunteer. Have something of your own that helps you develop and maintain self-respect — and demand respect from your partner.

Note: This interview was edited for length and clarity.



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