

Want to Save Valentine's Day? Sign this Prenup!

By

Getting a marriage proposal on Valentine's Day is so romantic. Today, though, more couples, especially millennials, are asking their fiancés to sign prenuptial agreements before tying the knot.

That can put a damper on things, but prenups are the **ultimate marriage safety net**, say relationship experts Tracey J. Coates and Carlos Lastra, co-chairs of the Family Law Practice at Paley Rothman. For couples -- even those like *Jeff and MacKenzie Bezos* -- who apparently did not have a prenup, divorce can become an even bigger headache.

Tracey and Carlos have many examples from their own years of experience, including how one post nup agreement saved a marriage. Tracey is also host of *The Divorce Chronicles* podcast.

Below is a Q&A with Tracey and Carlos on the rise of prenups, especially for millennials.



Tracey Coates and Carlos Lastra, Family Law Co-Chairs

Why Are More People, Especially Millennials, and Millennial Women, Turning to PreNups?

Coates: People are getting married with more of their own assets, like stock accounts, retirement benefits, and their own homes, and they want to be sure those are protected in the event of a divorce. You can also write in penalties for bad behavior. Millennials are increasingly seeking prenups, and it's an excellent idea, especially as they are decided when everyone is happy.

Millennials increasingly are seeking prenups for a variety of reasons, including:

- **Waiting later in life** to get married, while accumulating greater assets as compared to their younger counterparts who marry earlier on in their careers and haven't begun to acquire as much;
- **Non-traditional careers** with higher income potentials (e.g. gamer, business owners, online entrepreneurs); and
- Those who are **beneficiaries to generational wealth**.

Many women, particularly millennial women, are earning more than their male counterparts and they want to protect their assets.

Lastra: A prenup is the ultimate 'What If.' If you quit your job then X will happen, if you start a business then Y can happen.

As such, prenups provide security because you don't know where you will end up in life. When **Jeff Bezos and his wife MacKenzie** were married, they shared a Honda Civic. Today he's one of the wealthiest men in the world, and now they have private jets. If they had a prenup, it would have made their divorce process easier.

Now that we know they don't have one: ouch!!

- Without a prenup, it's a painful process that can be expensive and out of your control.
- Prenups give you the most **predictability and control**.
- You legislate what happens, not a judge.

What Can a Prenup Cover?

Coates: A prenup can cover and protect what each person in the couple brings with them into the marriage or how best to protect those assets earned during the marriage. For example, if one of them inherited from their parents. Or if another had ownership in a family business. The prenup states what assets each can keep in the event the marriage doesn't work.

While a prenuptial agreement is designed to protect against the legal consequences of divorce or death, I think it's also important to point out that there are areas which cannot be included in a prenuptial agreement, for example issues related to custody and child support.

Lastra: Often a prenup includes some course of action, such as penalties, for bad behavior, such as cheating. **Cheating penalties** are common in prenups. There may be penalties and family arrangements that will take place if there are other types of bad behavior, such as mental, physical abuse or domestic violence.

It runs the gamut – and it is customized for you.

I have seen prenups that talk about things like:

- Cheating penalties
- Sexual relations provisions
- Career changes
- Fitness, weight control
- Anniversary travel
- Mother-in-laws
- Religion and faith
- Confidentiality and Non-disparagement clauses, especially for public figures, such as politicians, athletes, entertainers and celebrities

Generally, a prenup **works to encourage good behavior / discourage bad behavior**.

How Does a Prenup Work If One of the Couple Creates Something Ultra-Successful?

Coates: In many marriages, one of the couple might start a company, develop a software product, write songs, or have an idea that becomes highly, maybe even ultra-successful, and often the other spouse may have participated in the creation of that success. Or the other spouse may have run the household and raised the children so their mate could be successful in their career or business. The prenup looks ahead and takes these possibilities into account early, making provisions for each person in the relationship, long before there is a divorce.

Depending on the level of detail included (or not included) in a prenuptial agreement, it could have significant financial ramifications.

Take **Jeff and MacKenzie Bezos**, it is speculated that they **did not have a prenuptial agreement** making the division of their estimated \$137 billion dollar net worth **possibly the most expensive divorce of all time to date**.

Lastra: Even though we can't look into a crystal ball to predict the future, we can have a good idea of how we want each person in the relationship to fare in the event of a divorce. Do we want to make things equal? Do we want to make special arrangements for certain developments? Do we want to return to the status quo as things were before the marriage? We can address many types of desires and intentions with prenups. **The prenup will drive what the couple does if and when they divorce.**

It's about giving you control.

I get many calls from the parents of the groom and bride asking about protecting the family wealth in a divorce to preserve it for one parent and if possible grandkids.

Many of the prenups Tracey and I prepare have an estate planning component, for couples that are thinking about what happens when they have kids, as well as for subsequent marriages where there are children from a prior relationship.

How do prenups work in community property states?

Coates: Currently, there are **only 9 community property states** (including Washington state where Jeff and MacKenzie Bezos reside). One of the distinguishing facts of a community property state is that both parties are presumed to equally own all of the marital property and it will be divided 50/50 in a divorce. Whereas in an "equitable distribution" state, which Maryland and DC are, marital property is not presumed to be owned 50/50 and is divided "equitably" and not necessarily "equally" upon a divorce.

Lastra: The prenups Tracey and I draft have jurisdiction clauses that follow you wherever life takes you, be it a community property state or overseas. Prenups give you that protection and certainty.

People are talking about "post" nups? What are those and how are they like prenups?

Coates: A post nup is a marital settlement agreement that is made after you're married but while your marriage is intact. They work very much like prenups, and we think they are a good idea. Anytime a couple can agree to things like division of assets, and penalties for bad behavior when they are happy together, the easier things will go when they want to dissolve their marriage.

Lastra: Post nups can be very helpful. In both cases, prenups and post nups are designed to help couples stay in their marriages by **creating deterrents or incentives**. I once had a client whose spouse had a problem and the other spouse, rather than leaving the marriage, wanted to stay in it. They created an agreement where the spouse with the problem would seek counseling and they made various agreements about what would happen if the counseling failed. That marriage held together.

It gave them the control to know what would happen if their efforts failed, but the freedom to go all in to save their marriage – ten years out – they are happy again – for them it worked.