

PRE-WEDDING PLANNING: To Marry or Not to Marry?

Now that we have the right to marry in Florida, and you have chosen your husband, or wife, there are legal issues to consider in addition to the when and where of your wedding plans. First, while there are over one thousand rights conferred by the act of legal marriage, your marriage also comes with serious set of obligations - one way of pro-actively dealing with the obligation end of marriage is to consider a pre-nuptial agreement. Next, contrary to popular belief, even after marriage, the “estate planning” documents we previously relied on to give us rights to inherit and act on behalf of our partners are still needed to assure that your assets and your care in event of disability and death are managed according to your wishes, and not by default under the law, which most often is NOT as you would have chosen. And finally, with the current excitement about Gay Marriage, for deeply personal, philosophical, political and economic reasons, many, if not the majority of same-sex couples will choose to remain in unmarried committed relationships - our community will continue to benefit from the legal status conferred by “domestic partnership” legislation.

Pre-nuptial and Postnuptial Agreements

Most of us believe it won't be us - but, statistics say approximately half of marriages end in divorce. In the absence of a legally binding pre-nuptial agreement, should your marriage end in divorce, your assets (real property, personal property, bank accounts, brokerage accounts and retirement savings accounts) may be subject to being divided between you and your ex by Florida's rule of equitable distribution. In order to avoid that potentially devastating outcome, many couples agree in writing to give up all or most of the rights to the other's separately acquired assets, retirement plans, and assets earned during the marriage. The agreement can be entered into either before the wedding - a “pre-nuptial” agreement, or after the wedding - “post-nuptial” - but, should comply with some basic rules that ensure it won't be overturned in a nasty divorce. For example, both parties should be represented by an attorney so that neither can assert that she didn't realize the legal implications of signing the document, that the document wasn't presented on the “eve” of the wedding, avoiding the argument that it was presented at the last minute and that it was signed under pressure of the imminent nuptials.

Pre-nuptial Agreements are regarded by many as a very unromantic proposal to make upon the acceptance of the marriage proposal. However, the effect of entering into the agreement in advance of a possible divorce, is that your behavior when you are at your worst, that is, at the divorce settlement table, will be governed by your agreements made when you were feeling sane, in love and respectful of your spouse to be. Marriage shouldn't be encumbered by a coerced financial liability to your spouse, but, should be a consensual union based upon mutual love and respect. That being said, the decision to create a “pre-nupt” should be jointly reached and not coerced, and negotiated with love and mutual regard. For example, if you intend to be the working spouse and your betrothed the stay at home parent, then, your agreement should

include provisions assuring that your partner who is forgoing advancing his or her career, etc., be compensated for his “sacrifice” to your joint marital plan.

As for planning for disability and death, the essential documents are still needed. First, a will and or a revocable living trust to ensure that your assets are managed according to your wishes upon your death. Marriage provides some inheritance rights, but, does not ensure that your spouse will inherit as you both might imagine. To assure that your wishes be carried out in the event of disability, a Durable Power of Attorney (for finances), a Living Will, a Designation of Healthcare Surrogate, and a Preneed Guardian Designation, may be prepared.

Domestic Partnership

Domestic Partnership is a subject close to my heart: I worked on the Los Angeles County Domestic Partnership legislation with Tom Coleman in the 1980s and, with his blessings, I imported it to Broward County in 1997. The rise of the importance of domestic partnership as a status for unmarried committed couples reflects the sea change in the way people live and configure their families in the United States. In the fifties 78% of households in the US were headed by married couples. Now more than 50% of all households in the US are headed by unmarried people. 42% of the workforce is unmarried. Across the US we have seen a trend towards inclusive domestic partnership benefit packages provided by employers, that is, gender neutral, encompassing both gay and straight domestic partnerships. To say that “you must marry” in order to obtain equal treatment at work, including pay, family leave, insurance, taxation, is just wrong. I think the current debate over the demise of domestic partnership legislation in the wake of gay marriage is necessary and that ultimately, domestic partnership recognition in the corporate world will definitely continue to grow. It is necessary to stay competitive in industry where almost half of the workforce chooses to remain unmarried. Gay Marriage is necessary, but the fact is that most gay couples are not married, and many will choose for personal, economic, political and philosophical reasons not to marry but live in committed relationships: they deserve equal rights to pay, and benefits that domestic partnership legislation offers. Planning your life as a couple should be undertaken as an act of love, the cost should be affordable, and your attorney should be chosen with an eye to experience and of course, respect for our LGBT community.

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