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## Do You Need a Prenuptial?

By Charlie Boyle  
January 2005



Are you considering remarriage? Do you have children from a prior marriage whom you want to ensure receive your estate upon your death? Have your adult children intimated that your spouse-to-be may be more interested in your money than in you? Do you want to minimize the risks of an expensive and emotionally draining divorce?

If the answer to any of the questions above is yes, then you should give strong consideration to entering into a prenuptial agreement with your spouse-to-be.

### Did you know that without a prenuptial:

1. More than thirty percent (30%) of essentially all of your assets will go to your new spouse upon your death whether you die ten years or ten minutes after the marriage ceremony?
2. Your surviving spouse may be allowed to live in your home for the rest of his or her life upon your death, thus preventing your children from benefiting from this asset for years or even decades?
3. In the event of divorce your spouse may be awarded a significant portion of the assets (including stock portfolios and business interests) that you bring into the marriage and keep titled in your name alone?
4. You may be required to pay alimony in the event of a divorce, even if your new marriage lasts only a short time?

A prenuptial can address all of these issues and protect the assets that you have worked a lifetime to accumulate. A prenuptial can also provide for and make fair and equitable provisions for your new spouse upon your death or in the event of divorce – fair and equitable based upon what you and your new spouse believe is appropriate instead of what a judge may later determine is appropriate.

### If you are considering entering into a prenuptial before your marriage, I strongly recommend the following:

1. Engage your spouse-to-be in candid discussions about this subject. Although such discussions may be difficult to approach, the process of negotiating and drafting a prenuptial will proceed more smoothly if a couple can have forthright discussions about the financial



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implications of the marriage and the general concept of the prenuptial. However, you should stick with the general concept and avoid specifics. Let your attorney deal with the specifics so you do not get locked into a promise, which later, upon guidance of your counsel you find not to be advisable.

2. Start the discussions at least several months in advance of the wedding date. Waiting until a short time before the wedding to address the subject will almost assuredly lead to both an emotional and a legal disaster.
3. If you are the "moneyed" spouse, be prepared to pay the cost for your spouse-to-be to hire his or her own attorney. The extra dollars you spend here could well be the difference between your prenuptial being enforceable in court or not.
4. Be prepared to make a full disclosure of your assets and income to your prospective spouse. Such disclosure is an absolute requirement under Florida law to form an enforceable prenuptial agreement.
5. Finally, make sure you hire an attorney who has extensive experience in drafting and dealing with prenuptials. You would not hire a general practitioner to do knee replacement surgery, would you? The drafting of a prenuptial is not a generic legal service. Ask your potential attorney how many prenuptials he or she has drafted. Is he or she board certified in family law? Has he or she ever litigated the enforceability of a prenuptial agreement in court? Remember, if your prenuptial agreement is later held to be unenforceable because you picked an attorney without adequate experience, then the potential financial risks are enormous.

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