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Shepherding you safely through difficult family transitions!

DIVORCE IN NEW YORK – PRENUPTIAL AGREEMENTS

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Stay tuned for our forthcoming series of articles in the New York Law Journal on *The Perils of Prenups*.

A prenuptial agreement is perhaps the hardest contract to draft and negotiate. Although it has legal effect like a business contract, it affects matters of the heart and a person's most intimate relations. Thus, it cannot, and should not, be negotiated like a mere "business deal." A party who negotiates a prenup but destroys the marriage in the process has not succeeded but failed and too often the way a prenup is handled becomes a self-fulfilling prophecy instead of a document that brings the loving couple closer together.

So a prenup should not be chosen rashly. In New York, where whatever a person has prior to marriage remains their's and is not converted to marital property, one need not get a prenup to ensure that separate property remains their's. There are, however, circumstances when a prenup (or even a post-nup) is necessary. What that is, you need a skilled, empathetic lawyer, who will guide you with care and devotion, and who won't upset the apple cart along the way.

View a prenup like you would a wedding dress. Sometimes you need one bespoke. Even when you find just the right one on the rack, you need to have it tailored and altered so that it's right for you. Prenups too. While experienced lawyers have their forms, the prenup that worked for the last couple won't be just right for you and your partner. It won't reflect your dreams, your visions and aspirations, and the household you and your partner want to set up. So recognize that engaging a lawyer to craft a prenuptial agreement for you will not result in an off-the-shelf product. The lawyer will have to spend time getting to know you and your concerns, and then spend time molding and crafting the forms to accommodate you and your partner. That means that often, while a lawyer can give you a range of what the prenup will cost, that will likely not be a hard and fast number.

NOTE: This monograph is intended as an educational guide and not as legal advice. Legal advice should only be obtained from a qualified lawyer who is familiar with all of the facts and circumstances of your matter.

In addition, assume that you will have questions once the prenup is drafted, and you will want changes made. You can expect to have several iterations of meetings with your lawyer in which the lawyer explains the provisions and why they were drafted as they were, and working through the issues to ensure that the prenup says what you want it to say. After you and your lawyer are done crafting the perfect prenup, it will be transmitted to your partner's lawyer. That lawyer will review it with your partner and you can expect there to be several rounds of negotiations and revisions to the document. It is only once that is all done, that the document is ready to be executed. So leave enough time to do all this. You don't want to butt up against the wedding date with the prenup still left unresolved. (That could also create issues about the validity and enforceability of the prenup, so it's best to get the prenup out of the way early.) Like with the wedding dress, leave yourself enough time to get it done right.

Do not be surprised if your skilled lawyer spends a lot of time crafting certain provisions carefully. By devoting several hours to ensuring that not only is a provision fair but it seems fair, we can head off a challenge and a heated argument, ultimately saving the client lots of lawyering and drafting time, angst and aggravation, and allowing for a smooth, loving process.

Nobody likes to be taken advantage of. So our advice, whether we're counseling a bride, groom, or a spouse negotiating a divorce, is to always start from a position of fairness. Tell your partner, "I want to be fair to you as well as fair to me. Is what you're suggesting going to be fair to me?"

Because so many provisions have a double-edged sword quality to them, expect your skilled lawyer to want to speak to you, to ensure that you understand how a provision that is there to protect you, might also hurt you if you're not careful or if circumstances change and you're oblivious of your rights. So do not buy a form out of a box, without a skilled, caring lawyer who will ensure that you are fully empowered and knowledgeable about the rights and responsibilities that the document will create. _____

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