

PRENUP, PLZ

More marrying millennials say it's something they need to have

By Lauren Kirkwood
LKirkwood@TheDailyRecord.com
Bloomberg contributed to this story

While prenuptial agreements have traditionally served the purpose of protecting the accumulated assets of those who are marrying later in life or are marrying for the second or third time, millennials have increasingly been requesting them in recent years, family law attorneys said.

Lawyers attributed the trend among younger couples to several factors, including millennials' tendency to put off marriage until their 30s — by which time they've often acquired assets they want to protect — and a greater awareness of the financial repercussions of divorce.

According to a survey of 1,600 lawyers conducted by the American Academy of Matrimonial Lawyers, more than half of matrimonial attorneys saw an increase in millennials seeking prenups throughout the last three years.

Dana McKee, a family law attorney at Brown, Goldstein & Levy LLP in Baltimore, said within the last year she's seen a noticeable uptick among young clients, many of whom are in their early 30s, requesting prenups.

"Years ago, it used to be people going into their second marriage who were older and had children, and now I'm seeing people who have never been married before," McKee said.

Millennials aren't the only demographic increasingly seeking to protect themselves before walking down the aisle, however. According to the survey, 62 percent said they've seen more frequent requests for prenups from clients of all ages.

"I have absolutely seen an uptick in prenups across the board — people are certainly much more educated and aware of the horror stories that happen when people don't contemplate this in advance," said Linda S. Ostovitz, a principal with Offit Kurman P.A. in Columbia. "I think that people are just, across the board, more educated and more aware, and that awareness is causing people to be a little more proactive before they walk down the aisle."

Compared with previous generations, however, significant number of millennials grew up with divorced

parents, giving them a unique perspective on the risks of divorce, said Ferrier Stillman of Tydings & Rosenberg LLP.

"They're the first generation to personally observe fights about money by their parents that are in the context of divorce," Stillman said. "They're so much more aware of the financial risks of divorce than people coming of age 20 years ago or 30 years ago or even 10 years ago."

Millennials might also find themselves pressured into requesting a prenup by parents or other family members whose marriages have dissolved, McKee said.

INTELLECTUAL PROPERTY

While older couples or those who've previously been married might be eager to safeguard property they wish to pass on to their children in the event of a divorce or death, young couples who have not accumulated extensive wealth or assets occasionally want prenups to protect their intellectual property, whether that amounts to screenplays or software, attorneys said.

This type of prenup could have language that goes into the future "for things that are not yet in existence," said Steven Kirson, an Atlanta-based divorce attorney.

Added Ostovitz: "A lot of intellectual property is a work in progress — there's books, music, computer games, all kind of things you can think of that certainly would fall into a category of marital property."

However, she said, protecting ideas presents numerous challenges.

"What is it, what does it look like, how long is it going to take to come to fruition, how do we name it?" she said. "It's very easy to identify and value a finite object."

Stillman said prenups for copyrighted intellectual property are fairly common, but added that she would question the enforceability of a prenup for something that does not yet exist.

"It's one thing for a spouse to waive all profits from something that has already been copyrighted or trademarked or patented, or even an idea that's been put to paper and is starting to come to fruition," Stillman said. "Waiving one's right to a spouse's intellectual property that hasn't even been thought of yet is sort of like waiving custody rights for children who haven't been born, and a prenup certainly cannot achieve that."