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How Using Mediation Avoids Many Common Problems With Prenuptial Agreements

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Mediator Kimberley Keyes explains how soon-to-be spouses can use mediation to avoid many common problems with prenuptial agreements.



Mediation provides soon-to-be married spouses who agree to execute a prenuptial agreement with a cooperative, stress-free process for preparing a prenuptial agreement that avoids many of the stresses and pitfalls associated with the conventional approach. Marriage is a time for couples to come together, not drive each other apart. Unfortunately, many couples who agree that a prenuptial agreement is appropriate choose an adversarial method for negotiating and preparing a prenu that can

pit spouse against spouse. Using a mediator, couples can achieve their goal of executing a prenuptial agreement without risking harm to their relationship. Divorce mediation is capable of handling numerous issues ranging from alimony to child support to asset division. However, mediating marital disputes is not limited to couples who are breaking up at the divorce context. In fact, one of the most useful times for a mediator's involvement comes before a couple even ties the knot: by mediating prenuptial agreements.

The Emotional Tension of a Prenuptial Agreement

Prenuptial agreements are a thorny and potentially disastrous topic of conversation for engaged couples. Despite being at the height of their romantic feelings – when a couple has just expressed their shared desire to spend their lives together – starting a pre-nup discussion can cause serious tension. Prenuptial agreements are often perceived as a betrayal of the very passion that underlies the marriage. However, the fact remains that a prenuptial agreement includes important and necessary protections for each spouse. Many marriages end in divorce, and the reality is that a divorce based on a prenuptial agreement tends to be far faster, more orderly and less expensive than the legal free-for-all that can ensue without a pre-nup.

Pushing for a Prenuptial Agreement Can Damage a Healthy Relationship

Asking your future spouse to sign a prenuptial agreement is an implicit acknowledgement that the relationship may come to an end in the future. This can be anxiety provoking for a spouse-to-be. However, asking your future spouse to sign a pre-nup with restrictive terms can result in downright hostility. Indeed, many would-be spouses express a willingness to sign a prenuptial agreement before blanching at the terms contained inside. The most common approach to executing a prenuptial agreement goes like this: the wealthier spouse (who has more assets to protect) pays for a lawyer to prepare a pre-nup that provides said wealthier spouse with maximum protection. The attorney

and wealthier spouse review the draft agreement, and by the end of the discussion, the wealthier spouse is convinced that the draft agreement is a perfect representation of a standard prenup. Then, the less wealthy spouse receives the document... Upon reading the 25 to 50-page, single-spaced prenuptial agreement prepared by an expensive attorney, the less wealthy spouse feels shaken on multiple levels. First, the less wealthy spouse is shocked by the cold reality that if a divorce should ever occur, she will face a highly trained lawyer in an adversarial legal proceeding. This is not a pleasant realization. Next, the less wealthy spouse will focus on the specific terms, perhaps with a growing sense of unease (or outrage) as they realize their new spouse intends to impose draconian financial limits if and when a divorce occurs. Feeling outgunned and outspent, the prenup process can feel *just as coercive as divorce litigation*. For the less wealthy spouse, receiving a fully-developed draft of a prenuptial agreement from a hard-nosed divorce attorney can be rather shocking indeed. Thankfully, there is a better way.

Mediation a Prenuptial Agreement is Planning for the Future Without Sacrificing the Present

As noted above, many spouses-to-be are comfortable with the concept of executing a prenuptial agreement. However, when the time comes to exchange draft proposals, distressing power dynamics emerge. The wealthier spouse hires an expensive attorney to prepare a draft prenup with the sole purpose of protecting the wealthier spouse for \$10,000. The less wealthy spouse is told to review the agreement with his or her own (much less expensive) attorney. It can be a confrontational and highly uncomfortable experience. Thankfully, *mediation rewards creativity* - providing an alternative for spouses who want to start their marriage working cooperatively, not coercively. Mediating a prenuptial agreement fundamentally changes the prenup process. A mediated prenuptial agreement is not prepared by a hired gun attorney whose sole duty is to protect the wealthier spouse. Mediation is collaborative. Both spouses have equal seats at the table. Both spouses' voices are heard, and their concerns addressed. Neither spouse is steamrolled,

dictated to, or told “take it or leave it”. Preparing a prenuptial agreement does not need to be traumatic. Assume that two soon-to-be-spouses have discussed a prenuptial agreement in basic terms. Assume the less wealthy spouse has no objection to signing a document that protects each spouse’s premarital assets in the event of a divorce. What happens next?



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Try Mediation for Your Prenuptial Agreement

When spouses mediate a prenuptial agreement, the negative power dynamics of “wealthy spouse” vs. “poor spouse” are removed. The couple avoids the intimidation and distress that occurs when the wealthier spouse’s attorney dictates the terms of a prenup to the less wealthy spouse. Instead, the mediator guides the spouses through an orderly process in which shared goals are achieved through cooperation, and each spouse’s concerns and anxieties are addressed with respect and consideration. If you and your soon-to-be-spouse agree that you want a prenuptial agreement, but are anxious about the process, consider mediation. Avoid lawyers. Avoid negative power dynamics. Avoid take-it-or-leave-it confrontations. Don't litigate your divorce before you are even married. Mediate your prenuptial agreement.

Kim is a divorce mediator for South Shore Divorce Mediation, located in Hingham, Massachusetts. She is also a Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Kim is a statutory mediator under [M.G.L. Ch.](#)

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