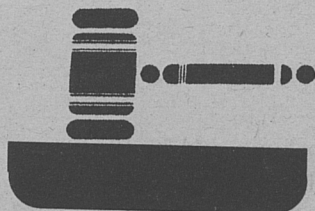


LEGAL BRIEFS

by susan murray & beth robinson



Do You Need a Prenuptial Agreement?

You cheered when the Vermont Supreme Court issued its groundbreaking ruling in the Baker case in December. You watched with fingers crossed as the Legislature debated the civil union bill, and you rejoiced when Governor Dean signed the bill into law. You've hired the caterer, settled on the music and flowers, reserved the date, and sent out the invitations. In planning your civil union, you haven't forgotten anything.

Or have you?

Have you remembered to consider a prenuptial agreement? True, thinking about a prenuptial agreement isn't the most romantic way to get ready for one of the most joyous days in your life, but taking the time now to talk about whether you need or want a prenuptial agreement could save you a lot of heartache later on.

A prenuptial agreement is a contract between two people who are entering into a marriage (or a civil union), signed by them before they enter into the union. It describes the assets and debts each party is bringing into the union. It clarifies the rights and obligations each spouse will have to any assets and debts they acquire in the future. And it spells out the parties' expectations about and rights to the income they will each earn in the future.

Typically, prenuptial agreements address these issues in anticipation of the possibility of a divorce (although they can also address these issues in connection with the inevitability of death). We certainly don't want to bring bad karma to the institution of civil unions even before it gets started, and we obviously don't yet have any statistics on civil union divorces or "dissolutions." But we do know that half of all heterosexual marriages end in divorce, and if only a fraction of spouses in civil unions decide to end their unions, some folks may wish they had gotten a prenuptial agreement ahead of time.

How do you know whether you need a prenuptial agreement?

Vermont's new civil union law says that whenever the word "spouse" is used in Vermont law, it applies to parties in a civil union as well

as to parties in a marriage. (That's right, once you get a civil union, you are considered "spouses," just like a married couple. We should start using that word, since that's what the law says.)

Since you will be considered a "spouse" in the eyes of Vermont law, when you enter into a civil union you will have access to the hundreds of rights and benefits that spouses automatically get when they marry each other in Vermont. By the same token, you will also be responsible for supporting one another to the same extent a married couple has to support one another under Vermont law.

In fact, the civil union law specifically says that Vermont's divorce laws apply to civil union break-ups. That means that if you and your spouse decide to end your civil union, you must go to family court, and the court will decide who gets what assets, who pays what debts, and who has to pay what amount of spousal support or "alimony."

Obviously, having access to the family courts will be a great benefit for many civil union spouses, especially if those spouses made non-monetary contributions to the household as homemakers or parents, or otherwise sacrificed their careers in order to support their spouse's career. For the first time in our history, the law will step in and provide much-needed financial protections for economically vulnerable spouses, in the form of property awards and spousal alimony.

On the other hand, when you enter into a civil union, you will lose the ability to automatically keep whatever assets are in your name when you break up; instead, the family court will decide how your real estate, retirement funds, stocks, inheritances and all other assets will be divided. Although the courts will take into consideration whose name the asset is in, and who contributed to the increase in the value of the asset during the course of the union, there is no guarantee that you will be able to keep the asset upon a break-up. This is also true of debts: the family court will decide who is responsible for paying credit cards and other debts incurred during the course of the civil union. Finally, the

family court will decide if you are entitled to receive alimony, or if you have to pay it.

If any of these divorce "rules" make you nervous, you should consider a prenuptial agreement. A prenuptial agreement will help you and your partner spell out exactly what your respective expectations are with regard to each other's assets, debts, and income. In the event of a break-up of your relationship, it will also tell the family court how you want to divide all of your assets, debts, and earnings.

If the family court judge finds that your prenuptial agreement is valid, the judge will abide by the terms of your prenuptial agreement, even if Vermont law would have required a different division of the assets and debts and income. To be valid, a prenuptial agreement in Vermont must satisfy three basic requirements.

First, each party must make a full and accurate disclosure of all of his or her assets and debts, and attach the list to the agreement.

Second, the agreement must be fair; it will not be enforceable if it completely deprives one party of income or assets upon divorce.

Finally, each party must enter into the agreement freely and voluntarily. This means that you shouldn't rush around on the day before your union ceremony, trying to get the agreement drafted and signed; you should do it weeks, if not months, in advance, so you both have time to read and contemplate it. It also means that both of you should review the draft agreement with your own attorney before you sign it.

Although a prenuptial agreement isn't as sexy as picking out your honeymoon destination, it is just as important to consider. Feel free to contact us if you have any questions.

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury. This column features timely information about legal issues of interest to our community. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356. ▼

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