

Will You Marry Me?

... AND SIGN A PRENUP?

by David Lefkowitz

Did you have a happy Valentine's Day? Were you one of the many people who got engaged on February 14? If so, then this column is for you. Lots of people get engaged in February and then have wonderful spring weddings. (Of course, it's a violation of a well-known, yet unwritten, rule that you do not get married on a fall weekend in Georgia.) Some people will plan their future without giving it nearly enough thought. Undeniably, there are the standard considerations, such as whether you really want to spend the rest of your life with this person, whether you can tolerate their parents, and whether your views on religion, monogamy and children are compatible. Enough with the standard questions; let's spend some time contemplating the legal issues which should be discussed after you say, "I will," but before you say, "I do."

WHO KEEPS THE ENGAGEMENT RING?

Everyone wants to know: In the unlikely event that the engagement doesn't result in a marriage, who keeps the engagement ring? As a general rule, an engagement ring is a conditional gift given by one party to the other in anticipation of marriage. Therefore, if the party who receives the ring breaks off the

engagement, then the ring would generally go back to the person who gave the ring. Once the couple is married, the ring belongs to the recipient and is not considered marital property (meaning that the wife keeps it in a divorce). Keep in mind, that gifts that are given for Christmas, birthdays, etc., are usually not considered conditional gifts. So, Mr. Romantic Fellow, if you give your girlfriend a lovely diamond, but you will want it back if she breaks off the engagement, be sure not to give her the ring on a holiday (I think you are safe if you gave her a ring on Valentine's Day.)

A PRENUPTIAL AGREEMENT

The purpose of a prenuptial agreement is to determine how assets will be divided if you get divorced. Most people who propose a prenuptial agreement, do so because they enter the marriage with far more wealth than their partner. "Will you marry me?" is one of most romantic questions in the world. Asking for a prenup is on the other end of the spectrum. After all, is there any better way to express your undying love for someone than asking them to sign a document saying that they won't get squat if you get divorced? I am not advocating against prenups; for some people they are very important. For those people, the value of a prenuptial agreement outweighs the discomfort in asking for one.

Donald Trump protected himself with a prenup. Paul McCartney is getting married, again, and he is, again, forsaking a prenup. He still believes that "all you need is love."

HAVE YOU BEEN MARRIED PREVIOUSLY?

Do you have a former spouse who is paying you alimony? In Georgia, alimony generally stops upon the remarriage of the person receiving alimony. If the divorce decree does not specifically say that alimony will continue in the event of remarriage, then it will immediately end. Put another way, if the divorce decree states: *Wife shall receive alimony for eight years*, but the wife gets remarried in one year, the alimony will end after one year. Many people have been shocked by this aspect of Georgia law, and many ex-husbands have been relieved of their obligation to pay alimony because of this law.

A WILL

In Georgia, if you are married and die without a will, most, if not all, of your assets will go to your spouse. If you want to leave something to someone other than your spouse, then you need a will. (Actually, you need a will regardless of whether you are married, but I have written that a few times in prior columns, so I won't mention it again in any detail.) In addition to updating your will, you should

also consider naming your spouse as the one who will make important decisions if you cannot (ie: should you be in a hospital, unable to make informed decisions regarding your care or regarding end-of-life decisions). Consult a lawyer about these considerations. Those of you who are procrastinating and still do not have a will (you know who you are), do it this month, especially if you have kids.

PROPERTY

Holding real property (“real property” is a house or land) jointly with your spouse avoids the legal issues that arise when one spouse dies. When real property is jointly owned by spouses, (“joint tenancy with the right of survivorship” is the legal term) the property passes to the surviving spouse instantly upon the death of one spouse. Therefore, if I die before my wife, our house will immediately be hers, without passing through my estate, without any taxes being due, and without any hassle. (There will be other issues when I die, but transfer of property will not be one of them.) There are often reasons that spouses do not want to hold real property jointly, and that is perfectly fine. Many older couples enter a marriage with two homes, one of which becomes the marital residence, and the other may be kept or sold. There is no requirement that the homes be co-owned by the spouses. However, if for romantic or practical reasons, you want to have joint ownership, go ahead and have a lawyer handle that for you. Often, it is an easy administrative process to give a 1/2 interest in property to a spouse.

Personal property also can be owned jointly. (I politely declined the opportunity to be on the title of my wife’s minivan; to this day, I can honestly say that I do not have one.) If you want stocks, bonds, cars, etc., to be owned jointly after you are married, you will need to take measures to make that happen—it will not happen automatically.) One thing I should note: the person who owns *legal title* to property may be different than who is *entitled* to the property in the event of a divorce. In Georgia, property that is acquired during the course of the marriage, using marital funds for the purchase, is considered marital property, regardless of whose name is on the title or deed. The husband and wife will equitably distribute it in a divorce proceeding.

DEBT

If you are going to marry someone who has a lot of debt, you may wonder if you will be obligated to pay it off. Legally, the answer is no, as long as you did not cosign for the purchase, guarantee the loan, etc. Generally speaking, creditors cannot come after one spouse for the debts of the other. The main factor pertains to the name appearing on the debt. It may be romantic for a wife/fiancé to offer to co-sign on a credit card, but beware the risk if she does that; his debt becomes her debt.

When you are considering marriage, you know you should use your brain and your heart. But, consider the above issues carefully before you tie the knot. It can save you a lot of heartache down the line.

COMMON LAW MARRIAGE

Common law marriage (sometimes referred to as “informal marriage”) is a marriage that is legally recognized in some states, but not in others. In a common law marriage, there is no formal ceremony, and no license is issued. However, a couple may be considered to be legally married, as common law spouses, if they live together and hold themselves out to others as being married (use the same last name, file joint tax returns, referring to each other as “husband” and “wife,” etc.). Georgia eliminated common law marriages in 1997. However, if you had a common law marriage before January 1, 1997, it will still be recognized as legal.



David Lefkowitz is the founder of the Lefkowitz Firm, LLC, which has offices in Atlanta and Athens. The Lefkowitz Firm, LLC, represents individuals and corporations in their claims for legal malpractice (legal negligence) and similar claims such as breach of fiduciary duty, trustee misconduct and executor misconduct. The firm also represents attorneys with regard to law firm management issues, including conflicts and bar discipline matters. Mr. Lefkowitz frequently is an invited speaker at continuing legal education seminars on the topics of legal malpractice, ethics and professionalism. For more information, visit the firm’s website at: www.LefkowitzFirm.com.