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*If you have a topic you would like to see addressed, or comments and questions about this column, feel free to reach Dina at (408) 357-3486 or dina@ffmediation.com or her website [www.ffmediation.com](http://www.ffmediation.com).*

## Broken Love: The Intersection of Divorce and Therapy

### Prenups: What, Why, and When?

*A Legal Perspective by Dina Haddad, Esq. LLM*

Do you have a client considering marriage? Have you wondered whether a premarital agreement would be an important consideration for your client? Premarital agreements, also referred to as prenups, define a couple's financial and fiduciary responsibilities to one another, the ownership of assets and debts, and the management of income and expenses. The agreements are signed prior to marriage with the intention to circumvent California law with respect to property and debt in the event of a divorce or death.

What can you do in a premarital agreement?

In a premarital agreement, you are able to contract out of California's community property laws. In California, a party's assets owned prior to marriage, or received by inheritance, gift or devise, are the party's separate property. In other words, he/she owns 100% of those assets. All other property falls under the catch-all of community property, belonging equally to the married couple. However, it can get tricky.

Many assets have the quali-

ties of both community and separate property, known as "mixed character". For example, Paul purchases a home prior to marriage. He keeps the title in his name throughout the marriage, but pays down the principal with income from his salary (community property). The community (i.e. the couple) now has an interest in Paul's separate property home. In addition, if Jessi-



ca, Paul's wife, spends time improving the property with her time (a community property asset), the community would be entitled a reimbursement for her efforts.

A premarital agreement can prevent this situation. In a premarital agreement, a couple may contract that all income earned during marriage is the separate property of

the person who earns it. They might also agree that any person's efforts, time, or skill used to improve the other's separate property is a gift to that person.

Here are some other agreements a couple might make:

- No community property may be created during the marriage.
- All property owned prior to marriage remains separate property, regardless of the change in character or if community property is invested in that property.
- Any loans taken are the responsibility of the person who assumed the debt.

Why would you want a premarital agreement?

Here are a few reasons why a couple may consider a premarital agreement.

- **Insurance against a nasty or costly divorce:** Premarital agreements are like automobile or disability insurance. You pray you never need it, but rest assured you have it in case the worst does happen.

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- **Prior divorce:** For those who have already divorced, they may want to avoid the potential of another divorce resulting in a loss of financial assets.
- **A defined financial relationship:** This may feel so unromantic and so unlikely for many lovebirds, but premarital agreements require a couple to do some important thinking in advance of financial marriage woes. For some, having this financial structure might put them at ease, and can be an opportunity for the couple to identify their financial expectations and

even their roles in marriage.

- **Blended family:** If an individual has children from a prior marriage, he or she may want to take extra measures to protect his or her estate for the children.
- **Retirement age:** If a couple is older, and closer to retirement, each may want to make sure her/his nest egg is protected, especially from the possibility of a protracted and costly divorce.
- **Waiver of spousal support/alimony:** Individuals may also waive spousal support in a premarital agreement. California is a no-fault state. Think about the difficul-

ty when one spouse has had an affair, resulting in the divorce, and that spouse is entitled to receive spousal support from the spouse on whom she or he cheated.

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