

# FAMILY MATTERS<sup>®</sup>

## Trend of the Law: Prenuptial Agreements

By Phoebe P. Hall, Attorney, Mediator and Former Judge

Prenuptial agreements increasingly are sought after by people with substantial assets or people with children from a prior marriage. These individuals want to provide for how the finances will be handled during the marriage and what would happen in the unfortunate instance of death or divorce. States are enacting special laws to deal with "Prenups" and lawyers are drafting many more of these documents.

Usually, the wealthier spouse demands the prenuptial agreement because he or she has assets and income to protect. Sometimes the impetus for a prenuptial agreement is that the couple is older and there are children or grandchildren to protect. Sometimes a

young couple anticipating that the wife may not work outside the home wants to include language concerning spousal support, or a couple may want to address private schooling, enrichment activities or college education for their children.

We help with the planning and with drafting of prenuptial agreements. We ask our client about his or her goals and objectives, and arrange for full disclosure of financial information. We then help our client address the financial issues while being mindful of the importance of building love and respect between the parties.

Many times couples are very much in agreement about how things should be

handled. Sometimes each person is surprised by the other's expectations about finances and the couple is better off to address it before the wedding. Making a prenuptial agreement can provide good protection for each party when the couple goes about it the right way with an experienced family law attorney.



**The law is always being rewritten**

*Mrs. Hall is an attorney and mediator. She formally was a substitute judge in the Richmond Juvenile and Domestic Relations District Court.*

### Inside this issue:

MARRIAGE MINDERS	2
SMART PLANNING	2
HOT TIPS	2
LOOKING AT ISSUES	3
WILLS AND ESTATES	3
KIDS CORNER	3
MORE LEARNING	4

## Important News at Hall and Hall

*Our law firm is dedicated to family law matters, and we are called upon by people from all walks of life to counsel them about courses of action they are contemplating, situations they are facing or to provide ongoing representation.*

### Our services include:

- Wills and estates
- Separation
- Divorce
- Mediation
- Custody and visitation
- Child support
- Spousal support
- Equitable distribution

### We help with:

- Prenuptial agreements
- Property settlement agreements
- Negotiations
- Litigation
- Uncontested matters

*We seek to provide what our clients need and want.*

### Special points of interest:

- *Serving Richmond for over 30 years*
- *Convenient offices in Chesterfield & Henrico*
- *Offering prompt and affordable services*
- *Friendly and experienced staff*
- *Client centered options*
- *Contested and uncontested matters and mediation*

## Marriage Minders



*"Till death do us part"*

*The sequence of marriage, divorce, and remarriage is a regular occurrence in our society. Every marriage is different. A second marriage does not necessarily mean that there will be no problems the second time around.*

*Regardless of whether you are marrying for the first time or marrying again, you should ask yourself some thought provoking questions:*

- ♥ Are you marrying for love or money or maybe both?
- ♥ Are family members, including children, influencing your decision?
- ♥ Have you learned to communicate with each other?
- ♥ Have you discussed how to handle conflict?
- ♥ Have you agreed how the finances in the family will be handled?
- ♥ Do you really love the other person or, are you just responding to your own sexuality?
- ♥ Does your intended spouse have a career that you support and are proud of, or will there be marital clashes with each other's career/homemaker choices?
- ♥ Are both parties mature enough to realize that life does not revolve around themselves?
- ♥ Is there any unfinished business in your life or that of your intended spouse? For example, has he or she completed the mourning of the death of a loved one or the loss due to divorce?

*Everyone is seeking wedded bliss when they marry. Make sure there is a foundation for happiness and stability in your relationship.*

## Smart Planning

### **John and Sally Balance** *Love and Finances* (A Hypothetical Case)

John and Sally were planning their wedding. Part of their wedding preparations included Sally scheduling an appointment at Hall & Hall to discuss having a prenuptial agreement prepared.

They each had a child from a previous marriage for whom they needed to provide. The prenuptial agreement, which was reviewed by John's attorney, caused them to think carefully about various issues. What would they do about assets each owned before the marriage? How should new assets be titled? What assets would they put in their wills?

After agreeing on their goals and objectives, John and Sally adopted a plan that let them feel that they were becoming true partners in their marriage and also provided properly for each of their children. It was hard having to think about all these things when they were looking forward to the wedding, but they were glad they took the time to address these issues.

## HOT Tips

### **TIPS FOR MAKING A VALID PRENUPITAL AGREEMENT**

1. Execute it early. We suggest at least 60 days before the marriage.
2. Don't make it too one-sided.
3. Attach detailed financial disclosures (prepared by an accountant or CPA).
4. Each party should have his or her own lawyer.
5. Ratify the agreement again after the marriage, especially where there are pensions involved.
6. For large estates or complicated situations, consider videotaping the signing.



## Looking At Issues By Franklin P. Hall, Esquire

The Premarital Agreement Act enacted by the Virginia General Assembly in 1985-1986 sets forth Virginia's legal requirements for a valid prenuptial agreement. Virginia law focuses on procedural propriety. The agreement should be in writing and signed by both parties. It is enforceable



The written law in the Commonwealth of Virginia

without consideration and becomes effective upon marriage. It can address matters such as the rights and obligations of each party to property, spousal support, the making of a will or trust, or life insurance. In addition, it can address any other matter relating to the couple's personal rights and obligations that are not in violation of public policy or

criminal law. To be enforceable the agreement must have been signed voluntarily and must not have been unconscionable when it was executed. The person must have been given a fair and reasonable disclosure of the property and financial obligations of the other party or must have voluntarily waived such rights in writing. Full disclosure is preferable to waiver to promote enforceability.

## Wills and Estates

*"I have substantial assets and am thinking about getting married. How can I keep the assets I own before my marriage segregated from property my new spouse and I acquire during the marriage?"*

*"My relationship with my former spouse is not good. I want to leave the bulk of my estate to my current spouse, but I am concerned that my ex-spouse and children will contest my wishes."*

Creating a Living Trust is an effective planning tool for both of these situations. A **Revocable Living Trust** is a written document wherein you appoint yourself as your own trustee and

name yourself as the life beneficiary. A life beneficiary is the person who enjoys the use of the properties of the trust. Most of your assets will be re-titled in the name of the living trust and as trustee, you have 100% control over your assets. Since it is revocable, you can change or revoke your trust at any time. You name one or more individuals to serve as successor trustees should you die or become unable to serve as trustee.

It is an excellent way to keep separate property acquired prior to the marriage from being commingled with assets during the marriage. It is

also more difficult to contest than a will. A fully funded living trust does not go through probate, and since you created the trust and served as trustee during your lifetime, it is difficult for anyone to claim you were incompetent or under undue duress when you created the trust. While wills and the entire probate process are open to the public, trusts are private, and remain confidential. For many people, this is one reason to implement a **Revocable Living Trust**.

To learn what tools will be most effective for you, contact us for an initial consultation.

## Kids Corner

*Step Families...Blended Families...Remarried Families.* When a man and a woman who have children wed and merge families together, they are called any of the above. They include mothers, fathers, children, stepmothers, stepfathers, step-siblings, step-grandparents. Each person comes to the new relationship with specific personalities and different perspectives. These become complex relationships because of the large number of people involved. The good news is there are some steps that can lay a solid foundation and make the "merger" one of love and understanding.

Communicate: Tell the children about

your plans and give them the opportunity to meet all the new people who will be a part of their lives. Have each child's parent tell them of the upcoming marriage and include them in the wedding preparation.

Listen: Don't try to win children over to your way of seeing things, but listen to their thoughts and feelings and really try to understand and respect them as a unique person. Keep in mind that remarriage destroys a child's dream that divorced parents will get back together.

Seek Advice: Consider counseling before the marriage to learn how to make this a positive experience and to

help you understand your child's perspective.

Finally, understand that there will always be arguments, frustration, and jealousies. We are all human, and disagreements are normal in all relationships. It takes time for a child to bond with a stepparent or step-sibling, so don't expect instant results.



Law Offices of  
Hall and Hall, P.L.C.  
The Family Law Firm  
of Virginia  
Divorce Solutions

The Hall Professional Building  
HALL AND HALL  
1401 Huguenot Road  
Suite 100  
Midlothian, Virginia 23113

Phone: (804) 897-1515  
Fax: (804) 897-2499

Franklin P. Hall, Esquire  
Phoebe P. Hall, Esquire  
Tracy H. Spencer, Esquire  
Natasha A. Ries, Law Clerk  
Deborah A. Allen, Paralegal  
Rebecca L. Sicheloff, Paralegal



*Serving you with offices in Chesterfield and Henrico*

## More Learning

by Tracy H. Spencer, Esquire

### What You Need to Know

A prenuptial agreement is a very useful tool to couples who are contemplating marriage and who want to outline their expectations. There are several questions that each person needs to answer when a prenuptial agreement is being prepared:

1. What is the purpose of the prenuptial agreement? To protect your financial assets? To protect your estate and your children?
2. Have you openly shared with each other your financial situation?



***You are never too old to learn***

3. Once you are married, what happens to the property that you owned before the marriage?
4. What about the property that is acquired during the marriage?

5. Will there be an obligation to financially support one another in the future if you ever separate?

Once you have discussed with each other your answers to these preliminary questions, the next step is to visit the attorney's office to have a document prepared. Each party has the right to have an attorney review the document before it is signed. After each person has reviewed and signed the agreement, it is recommended that the agreement be reaffirmed after the marriage in order to reflect your intentions and meet pension requirements.