

7 Tips to Overcoming Prenup Paralysis

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Does the thought of talking to your fiancé about getting a prenuptial agreement make you anxious and uncomfortable? Perhaps you are getting engaged and want to bring up the topic with your spouse-to-be, but fearful that it may put the brakes on your relationship? Do you wish there were some suggestions on how to handle “Prenup Paralysis,” the condition experienced by soon-to-be-weds at the thought of talking about prenuptial agreements? If the answer is yes, below are 7 tips that might help you as you consider the best way to reach out to a loved one on this difficult topic.

1. Know the facts first: If you are a first-timer to the prenuptial conversation, be reassured that your apprehension around talking about a prenuptial agreement is normal and to be expected. It is alright to embrace that you are not an “expert” on the topic, but be sure to reach out to your estate planning attorney and/or legal counsel to understand how prenuptial agreements work in the state you live or in the state where you may reside after marriage. Further, your attorney can provide you with a better understanding of what is needed for it to be enforceable and valid and the advanced timing to consider before approaching your fiancé. There are five basic rules of thumb for a prenuptial agreement to be enforceable:



- The agreement must be in writing
- The agreement must be executed voluntarily, not under duress
- The agreement must make full and fair disclosure of all financial information at the time of execution
- The agreement must be fair and cannot be unconscionable
- The agreement must be executed by both parties before a notary public

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In addition, it is advisable, though not required, that each party to a prenuptial agreement is represented by their own independent counsel and that the document is signed well in advance of the wedding day. Getting the facts ahead of time will allow you to provide some basic insights to the unique legal aspects of prenuptial agreements when you are communicating with your loved one.

2. Bring up a prenuptial agreement as part of broader planning: There is a fallacy that prenuptial agreements are something taboo or not to be discussed until the occasion arises. On the contrary, it is important to understand the purpose and uses of prenuptial agreements in the context of other legal planning tools and provisions, particularly as it relates to estate planning. For those who have created or inherited wealth, talking about the importance of how the wealth was created, what you are actively doing to manage and sustain it and what the wealth transfer terms were if you inherited it can help position a prenuptial agreement as part of a larger plan. Some families may discuss prenuptials as an informal family policy that is part of their wealth transfer planning and that such an agreement is expected for all family members who stand to inherit or who have amassed personal wealth. In other words, it's not personal; rather, it is one of the many responsibilities of having wealth.

3. Find a neutral time and place for these conversations: There is a misconception that you only have one conversation around a prenuptial agreement and then you are finished. Again, this is misleading, as likely you will have several conversations with your spouse-to-be, and it is helpful to set aside dedicated time, in a neutral place (a.k.a. not your parent's home,

or during a family celebration) to discuss more of the particulars. Prior to your conversations, find some time privately to collect your thoughts and write down the key points that you want to express during these conversations. A warning to the wise, if you think bringing an actual prenuptial agreement to your first meeting with a fiancé is the solution, you may be disappointed. Presenting a prenuptial agreement document before you have had an opportunity to discuss it conceptually may be construed as being "forced" or "mandated" to sign one and could certainly cause a rift in the relationship. Wait until there is a certain level of comfort around the topic before getting attorneys involved and drafting documents.

4. Watch the back story: Make sure that you are in the right state of mind to begin having these conversations. "Back stories", or the negative experiences of failed prenuptial agreements from others that prey upon one's own anxiety and fears of having these conversations, can certainly cloud your outlook. Give yourself permission to leave those negative anecdotes behind and start fresh with an open-mind and a positive attitude. If you walk into the conversation with your spouse-to-be with negative energy pent up from a bad day at work or when you are not feeling well, chances are it will come through as you bring up this sensitive subject. Be open, authentic and honest about why it is important to you or your family to have a prenuptial agreement and allow your spouse-to-be to express their feelings. Just because they may express concern initially, does not mean that the conversation is at a dead end. Again, give each other some time and space to digest the concept and promise one another that you will come back and revisit the topic in a day or so.

5. Leave the attorneys out of it initially: Although attorneys will be involved in the process once both parties agree to pursue a prenuptial agreement, it may be best to leave them out of the initial conversations. Wait until you and your spouse-to-be have had a chance to really talk about the topic, what it means to you and what you both want to accomplish by creating one. If you bring legal counsel to the first meeting with your spouse-to-be, the meeting may feel much less personal and potentially more adversarial. Your spouse-to-be should be encouraged to have their own attorney review the document once it is drafted. This step will help support a finding that the document was fair and reasonable.

6. Start with the end goal in mind: For fiancés, consider framing the conversation as an opportunity to “bridge your financial futures” and to start to better understand how you are going to work together to handle your future finances. As you will likely both bring effects (some sentimental and some material) it is important to make sure you identify which goes into the “community pot” and which will be retained by you individually. The process of completing a prenuptial agreement involves taking a full inventory of each of your personal assets, how they are titled and their current values. This disclosure of personal finances can be the start of very important dialogue that will help you better understand how you will manage the financial aspects of your lives as you transition into marriage.

7. Timing is everything: Keep in mind, if you have been putting off the prenuptial discussion with your spouse-to-be, prenuptial agreements may come under scrutiny if they are executed too closely to the time of the wedding. The courts may perceive that one party

or the other is “under duress” to sign the agreement, which may in fact nullify the agreement. Having the conversation prior to the need arising for a prenuptial agreement can be instrumental when the timing may be right for the engagement. For those who have not had the conversation regarding prenuptial agreements and are in serious relationships, it is best to have the conversation at least 6-12 months prior to the actual wedding date, as the process to complete a prenuptial agreement can vary. It is not uncommon for attorneys to urge blushing brides or dapper grooms to postpone their wedding for prenuptial agreements that are taking longer than expected to execute.

In closing, set yourself and your loved ones up for success by meeting with your attorney in advance to understand how prenuptial agreements work in the state you reside and then dedicating time to discuss a prenuptial agreement in a neutral space, where the conversation can take center stage. Collect your thoughts and the points you want to make on the importance of a prenuptial agreement, and then engage your fiancé with a positive frame-of-mind sharing how this is one component of broader planning. Remember that it may take a few different conversations before you both are on the same page; however, going down the path of a prenuptial agreement is a process that is well worth the time and effort.

Thank you to the contributions from women who attended GenSpring Family Offices’ 2009 Women’s Retreat. Many of the suggestions were directly gleaned from their personal experience of getting a prenuptial agreement or working with their children on the importance of having a prenuptial agreement.

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