

American Greed

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Can a prenup save your life? A practical guide

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Special Report



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You're in love. You're getting married. Your whole life is ahead of you. The last thing you want to think about is planning for what happens should the marriage end—the dreaded prenuptial agreement.

But for real estate developer Gary Triano, a prenup might not have been a bad idea.

Killed after a round of golf by a pipe bomb planted in his car, his socialite ex-wife and her former boyfriend emerged as prime suspects. The alleged motive? Duh! *Greed!*

*The money-filled murder mystery is the subject of the next **ALL-NEW American Greed**, Thursday at 10pm ET and PT on CNBC Prime.*

Triano made his fortune first in Arizona real estate, then in bingo parlors on Indian reservations. But the real estate market crashed, tribal-owned casinos became legal, and Triano began falling on hard times. By all accounts, the divorce from his wife of 13 years, Pamela Phillips, was bitter—a clear sign there was no prenup. When the dust settled, Phillips remained the beneficiary on her ex-husband's \$2 million life insurance policy—an ample sum, prosecutors would allege, to continue supporting her in the style to which she was accustomed. And a motive, they would claim, for murder.

Might a prenup have saved Gary Triano's life? We'll never know.



But an honest accounting of each other's finances and a plan for how to split the assets if things go sour is essential, says attorney Arlene Dubin, Chair of the Matrimonial and Family Law practice at Moses and Singer in New York, and author of the book *Prenups for Lovers* (Villard, 2001).

"How can you have a solid marriage with that elephant in the room?" she says.

Not a multi-millionaire or a socialite? Feel pretty certain your spouse-to-be doesn't have homicidal tendencies? That doesn't mean you don't need a prenup.

"In fact, it's more important for regular folks than for some of these high-flying celebrities," Dubin says, because an average couple has fewer assets and less opportunity to make the money back after the marriage ends—which, Dubin points out, "all marriages do," either through death or divorce.

"Anyone who is in a relationship where money—or attitudes about money—are unequal in any way should consider a prenup," says Sharon Epperson, CNBC Senior Personal Finance Correspondent and author of *The Big Payoff: Financial Fitness for Couples* (HarperCollins, 2009). "But even if you don't have a prenup, you need to have the 'money talk.' You need to know how he or she thinks about money as well."

Whether a frank discussion or a formal agreement, here are some of the things every couple needs to consider:

ASSETS

Got money in the bank? Investments in the market? An inheritance, or the likelihood of receiving one? How would they be divided?

Not all assets are financial. Dubin says many prenups consider "enhanced earning capacity." Let's say one spouse will be getting an MBA from Harvard down the road. The additional compensation the degree might bring can be considered marital property under the law.

"It's very common for people to carve out these intangible assets," Dubin says. That way, if one spouse worked while the other went to school, both get their fair share of their contributions—financial or otherwise—to the marriage.

Other assets to consider include pensions and other retirement plans, health, disability, and life insurance. Some prenups go as far as spelling out alimony or other support payments.

LIABILITIES

In a nation with \$1.3 trillion in student loans, it's a fair bet these days that at least one spouse will have some substantial debt going in. Who takes over the payments?

"I see situations where doctors with \$200,000 in student loans marry investment bankers," Dubin says.

Whether you are responsible for your spouse's student loans can depend on the state you live in, and whether the money was borrowed before or after you got married. A good prenup can remove the uncertainty.

Other liabilities to consider include mortgages, car payments, and the costs to start and run a business.

SHHHHH!

We live in an age of social networks, Dubin says, with "people posting everything under the sun on Facebook."

As a result, she says, prenups increasingly include confidentiality clauses, barring an estranged spouse from spilling the intimate details of your relationship.

The provisions have long been common in celebrity prenups. But in our information-obsessed age, everyone is at risk of embarrassing details going viral.

"Even for average people, these confidentiality clauses are getting to be very important," Dubin says.

What doesn't belong in a prenup? Dubin says couples are increasingly asking for what she calls "bad boy" or "bad girl" clauses, addressing things like adultery or addiction, which she says "mix apples and oranges"—the behavioral and financial aspects of a marriage.

"I usually discourage it," she says.

The key, she says, is a document that is broad enough to address the wide range of potential outcomes, but specific enough to give the couple certainty and peace of mind.

"The beauty of a prenup is that it's a contractual commitment," she says.

At the same time, a couple can update a prenup if circumstances change. And if you got married without a prenup, it's not too late. "Postnups," executed during a marriage, are just as effective, and increasingly common.

Still, while Dubin says her practice has "absolutely mushroomed" in the past 20 years as prenups have gained acceptance, many couples, especially younger ones, still don't want to deal with them before the wedding.

"They'd rather be going to a cake tasting," she says.

And that's too bad, because a prenup can get the relationship off on the right foot.

"Transparency, disclosure, communication. That's the key to a successful marriage," Dubin says.

It also might keep you off a future episode of *American Greed*.

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