

## THE MEANING OF MARRIAGE FOR MILLENIALS AND GEN Z

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There has been a noticeable shift in prenuptial agreements for millennials and Gen Z, namely that marriage, for them, is no longer an economic partnership. Many of them have lived with their fiancés prior to engagement and become accustomed to the financial arrangements made as roommates. They split the rent, utilities, and cable; everything is paid equally. The problem lies in the future when finances may not be so easily split down the middle. Nevertheless, individuals in their late 20s and 30s, who have either begun to climb the ranks in their careers or continue to higher education at the time of their marriage, do not want to be financially obligated to support their spouses at any point in the future. Many are entering into agreements where not only are both parties waiving maintenance (alimony), but they are waiving the right to any marital/joint assets altogether unless the parties intentionally title property jointly.

Marriage has always held religious significance and it seems that even though many New Yorkers are not particularly religious in the traditional sense, they still want to join the fabric of society that favors a formal coupling, particularly when children may be on the horizon. However, marriage is much more than a formal title which religion and government have prioritized and incentivized. In Obergefell v. Hodges, Justice Kennedy said in the majority opinion,

Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other.

Obergefell v. Hodges, 576 U.S. 644, 667 (2015). What is the value of a companion? Certainly, if both parties are healthy and working, it would seem that a roommate arrangement where spouses equally contribute to costs and expenses, and nothing is shared may be reasonable. However, prenuptial agreements will dictate the terms of any subsequent divorce whether the parties continue on the very same path or whether the paths diverge, usually with limited or no regard for the passage of time.

A maintenance waiver may seem reasonable when both parties are able bodied and working without children, but once children are involved, that becomes more complex. Who leaves work when the nanny calls in sick? Who takes the special needs child to the multitude of appointments, evaluations, and therapy? In all likelihood the parent with the less demanding schedule will sacrifice his or her career to act as the primary parent or backup childcare. After years of putting a career on the backburner so that other partner can flourish professionally, there is no financial equalization for lost opportunity.

Similarly, there may be no sharing of assets if a party becomes a caretaker for an ill spouse even if the unwell party has accumulated much wealth during the marriage and the caretaker spouse needs to continue working to build up his or her savings for retirement. The marriage vows of “in sickness and in health” will likely remain important to a loving couple and it’s only an afterthought that it may have catastrophic financial consequences to the spouse who would, of course, do anything to care for an ailing partner.

When I am approached by a client who wants to eliminate any meaningful sharing of assets, I explain not only the complication of childcare and caretaking, but I propose other meaningful ways to share certain assets even if the client clearly does not want his or her income and investments to be joint as they would have been under the law without any prenuptial agreement in place. There are a number of ways that prenuptial agreements, which are a contract like any other and personally tailored to the parties' desires, can create a more equitable and reasonable marital estate:

First, the parties can agree to a "Sunset Clause" for any maintenance waiver—this means that after a period of time or upon the birth or adoption of a child, the waiver no longer applies. Millennials and even more so Gen Z seem to be more hesitant to agree to a Sunset Clause, but when used, it recognizes that the passage of time may make the terms of the agreement unfair and a right like maintenance should be revisited.

Second, the parties can agree that regardless of who contributed monies to buy either a primary or a second marital residence, the marital residential properties will be divided equally upon divorce. Without a prenuptial agreement, parties are entitled to Separate Property credits if they contribute separate monies (i.e. premarital, gift or inherited funds) to the purchase of property and can document such payments. Upon divorce, Separate Property credits are paid first when a marital residence is sold and then the balance of the net proceeds are divided (typically 50/50). A waiver of such Separate Property allows the parties to feel that their home is truly "theirs" in the plural sense and both should be equally invested in what is for many their most valuable asset.

Third, I often propose that clients consider an obligation to obtain life insurance. Many prenups include an estate waiver, which means that neither party is required to leave any assets to the other upon death—whether they die happily married or miserably separated. A life insurance policy is way for the parties to be assured that their loved ones are taken care of even if they continue to have limited or no marital assets.

It will be interesting to see how the multitude of millennials and Gen Z fare in the future with their stringent prenuptial agreements limiting the marital pot and eliminating spousal support. Perhaps since the parties have a clear understanding of their financial arrangement, which many couples without prenups never discuss, this new generation will seek divorces well before dire financial consequences take hold. However, if there is a large swath of lesser monied spouses who end up penniless by the time they are middle aged, the tide may turn and monied spouses may need to offer more generous maintenance and marital property provisions in prenuptial agreements to get an agreement signed. Only time will tell.