

Marriage

Can Catholic couples make prenuptial agreements?

By Rob Cullivan
Staff writer

ROCHESTER — When most of us hear about prenuptial agreements, we may envision wealthy movie stars entering their fourth marriage, worrying about what will happen when their latest voyage into wedded bliss crashes upon the shores of infidelity.

But prenuptial agreements are actually quite practical arrangements between engaged couples, according to Greg Mott, an expert in prenuptial agreements who is the managing partner in the legal firm of Davidson, Fink, Cook and Kelly. They clearly define each partner's financial rights and responsibilities, he noted.

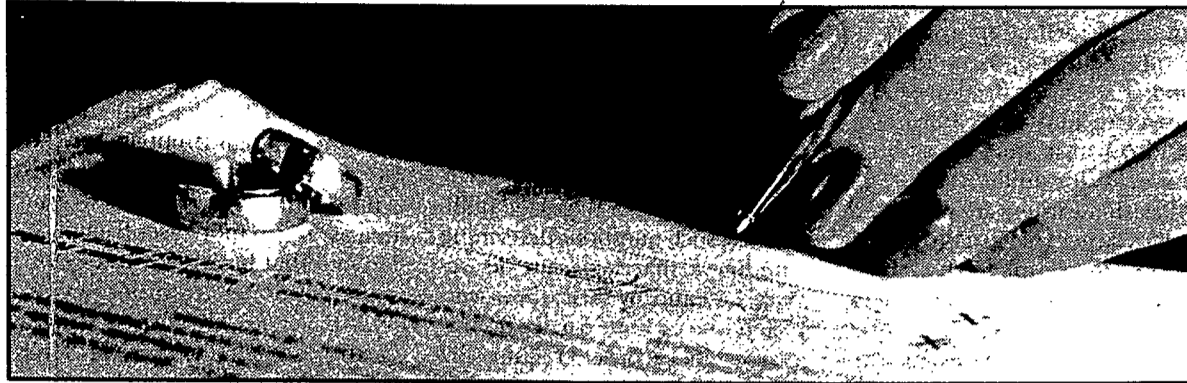
In fact, Mott advised any couple planning to get married to learn about prenuptial agreements, if only to learn more about how state laws affect a couple's finances.

"Usually, people don't start inquiring about what their rights are until they're too deep into the marriage ...," he said.

Generally speaking, Mott said, prenuptial agreements define what assets each spouse owns separately, and what is owned jointly, and how those jointly owned assets will be divided in the event of divorce.

Some agreements also point out what amount of alimony, or maintenance, will be given to an ex-spouse by the other in the event of a divorce, he said.

Mott added that although some prenuptial agreements address potential custody disputes over children, the courts retain the right to settle such disputes in



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what they see are the best interests of the children.

Given the church's strong stance against divorce, it may surprise Catholics to learn that the church has apparently taken no formal stand for or against prenuptial agreements. Neither canon law nor the 1992 Catechism of the Catholic Church addresses prenuptial agreements.

For that matter, when contacted by the *Catholic Courier*, officials at the National Conference of Catholic Bishops and at the United States Catholic Conference could not recall any church leaders issuing any formal or pastoral statements on prenuptial agreements.

Father Kevin McKenna, chancellor of the Diocese of Rochester and director of legal services, said that for the church to have any position on prenuptial agreements, it would have to look at each agreement on a case-by-case basis.

"In its most generic sense, (a prenuptial agreement) doesn't necessarily include the idea of divorce," Father McKenna said. "But if it is entered into with the idea of divorce, then I think the church would have some prob-

lems with it."

Neither Father McKenna nor Father Louis A. Sirianni, judicial vicar of the diocesan tribunal, could recall any cases in which a spouse pointed to the existence of a prenuptial agreement as an example of bad faith by one or both partners entering the marriage.

"It certainly would be something the tribunal would look at and ask why the prenuptial agreement was made," Father Sirianni said.

The tribunal would question a prenuptial agreement if it indicated that someone thought the marriage might fail, or that someone wanted to ensure he or she could escape from a marriage to remarry, he said.

However, the church wouldn't have a problem with some prenuptial agreements, he said. For example, a couple might make such an arrangement because the parents of one of the spouses conditioned willing an inheritance to their child upon the child's making a prenuptial agreement, he said.

Prior to 1980 in New York State, prenuptial agreements were generally made between

people getting married for the second time, one or both of whom was bringing substantial assets into the marriage, Mott said.

That's because state law entitles each spouse to one-half of the other spouse's estate upon the death of that other spouse, he said. Hence, a man and a woman often entered into a prenuptial arrangement to ensure that their respective children from previous marriages received an inheritance, he said.

He added that the courts will generally allow the prenuptial agreement to override the state's law on spousal inheritance.

Prenuptial agreements have become more popular since New York state changed its divorce laws in 1980, Mott said.

"The law is that whatever we acquire during marriage is marital property," Mott said. "If the marriage doesn't work out, the property is divided up by the courts."

This can lead to some horrific battles in court, Mott said, because what exactly is marital property can get complicated. For example, if you inherit money prior to being married, and then put that money into improving a house you own jointly with your spouse, it's doubtful you will get that money back in any way should the two of you divorce, Mott said.

"These are the items that create bitter divorces," Mott said. "These are the items that make divorces bitter and long."

By looking into prenuptial agreements, couples gain a better awareness of the law, Mott said.

"It allows people to go into a marriage with their eyes open," he said.

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