With more than 40 percent of developed world marriages ending in divorce, more UHNW couples are getting a prenuptial agreement.

Earlier this year, US real-estate billionaire Harry Macklowe announced that he would be getting divorced from his wife Linda, after 57 years of marriage. It is likely to be an epic battle because the couple reportedly never signed a prenuptial agreement. While high-profile divorce is never easy, it can be considerably mitigated with the signing of a prenuptial agreement.

Prenuptial agreements are already common in the US and in Europe, and their popularity in Asia is growing. With more than 40 percent of marriages in developed countries ending in divorce, these agreements can save a lot of stress, heartache, time and legal fees, particularly for ultra-high-net-worth (UHNW) individuals and families whose financial affairs are more complex and who have more to lose in a divorce.

Although not yet legally binding in Singapore, courts are looking increasingly favourably at such agreements. In Hong Kong the presumption is now that family courts should uphold nuptial agreements if they are fair and if both parties fully understand the implications. They should be an important part for any HNW couples in planning their future lives together. A properly drafted prenuptial agreement is crucial to protect the assets of the party bringing the majority of wealth into the marriage or to ring-fence any potential inheritance or business interests.

The most challenging aspect of prenuptial agreements, for most, is broaching the subject with their partner in the first place. It is a sensitive, awkward subject that could lead to a very negative and embarrassing reaction during a time meant to be filled with happiness and excitement.

Strong marriages are built on good communication so the best way to avoid awkwardness is to broach the subject as early as possible in a relationship, and to have a frank and open discussion about your future together. It is also important to choose your moment wisely. Pick a time to discuss getting a prenuptial agreement when you have plenty of time to talk things through properly and when your partner is in a good mood. It may be useful to use friends of yours as examples who may be able to talk to you both about their experiences to make the process seem less alien.

It may be the parents or close relative of an engaged couple, or even a shareholder or trustee, who feels the need to suggest a prenuptial agreement to an engaged couple rather than the couple themselves. That person may worry about causing offence. However, by starting the conversation so the couple don’t have to, a ‘third person’ can make the subject less personal for the couple, and it will be more of a lifestyle choice. A lawyer can also be asked to bring up the subject, making it even less personal.

Prenuptial agreements can be very simple, dealing only with one asset, such as vast family inheritance or a pre-marital bachelor pad, provisions about to whom jewellery will belong, capital payments to one spouse in the event of the dissolution of the marriage or clauses setting out provisions for any future children. The prenuptial agreement can be as complicated and detailed, or as simple, as you like.

The agreement should be drawn up plenty of time in advance of the big day. We recently represented a client whose spouse tried to set aside a prenuptial agreement on the basis it was drafted just three weeks before the wedding. In that case, the prenuptial agreement was given great weight by the court, however, it is always wise to have the agreement signed and sealed at least 28 days before the wedding. The document can then be filed away and in ideal circumstances, forgotten about, allowing the bride and groom to get on with their lives and to enjoy the excitement of planning their wedding. However, if the worst does ever happen, the prenuptial agreement will be excellent insurance.

You would insure against burglary or upon entering a business contract, in the hope that nothing bad will actually happen, but to make things as painless as possible if they do. It should be the same for a marriage.

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Authors

Samantha Gershon
PARTNER | HONG KONG
Divorce and family

☎ +852 3711 1606
✉ samantha.gershon@withersworldwide.com