

PRE-NUPTIAL AGREEMENT – THE GOOD SIDE

Recently, Marian Rivera and Dingdong Dantes made headlines when the two got engaged. One interesting tidbit that cropped up was that the two were contemplating entering into a Prenuptial Agreement. Stirred by this development, netizens reacted passionately to the idea:

“Wala ba silang tiwala sa isa’t isa?”

“Hindi naman pala unconditional love.”

“Iniisip na kaagad yung hiwalayan.”

Many have misconceptions about what a Prenuptial Agreement does. To be sure, it is not necessarily a mark of distrust between soon-to-be newly weds nor is it an indication that they feel less strongly about each other.

The most common understanding of a Prenuptial Agreement is that it bars the spouses from sharing or co-owning properties. Hence, the *“what’s yours is yours, what’s mine is mine”* mentality.

Unknown to many, however, is that a pre-nup does not always lead to a regime of complete separation of properties. In fact, it is possible to single out certain properties for exclusive ownership of each of the spouse, while retaining co-ownership over the rest.

Let’s illustrate.

Assume that two siblings (a brother and a sister) are co-owners in real property inherited from their parents. If the two siblings were to get married without a Pre-nup, their property regime would be governed by the absolute community of properties by default, meaning everything they have would now be co-owned with their respective spouses. So instead of simply having 2 co-owners, there will now be 4 co-owners.

So let’s say the brother is entertaining the idea of using the property as his contribution to a joint venture with a company. Meanwhile, the sister insists on developing the property herself, but her husband wants to rent out the property.

As we can see, the competing interests are starting to multiply by the number of co-owners involved.

Let's take this illustration a step further.

Due to the prolonged indecision, the brother decides to sell his interest in the property to the company thereby making it the new co-owner. The sister tries to redeem the property from the company but the company refuses and instead insists on a partition. Then the creditors of the sister's now-estranged husband appear and seek to execute on the property for debts which he incurred. At this point, a costly litigation is looking more and more unavoidable.

Clearly, things can get complicated very quickly. And this is only *one* real property. What more if several properties were involved?

Would a Pre-nup have helped?

Yes. By excluding the inherited property from their community properties, the siblings would have been in a much better position to agree on what to do with the property. In the example, the sister would have had a better chance of buying out his brother. More importantly, the creditors of the estranged husband would not have had to right to execute his debts on the property.

What have we learned here? That a Pre-nuptial Agreement, contrary to popular belief, is not necessarily "evil". As with all contracts, it is the intent of the parties which governs and gives life to it...and that intent may indeed be noble. If either party wants to keep certain properties separate to limit the number of vying interests over it, then they may indeed be better off with such an agreement in place. It may not be romantic, but in some cases, it may be necessary.