

EPISODE 1595

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FT: So Money episode 1595, the 411 on prenuptial agreements with Aaron Thomas, Founder of Prenups.com.

“AT: Pretty much everyone that I've come across who's getting married wants to stay married, right? So when we're talking about incentives, everyone wants to create ways to make the relationship work out.”

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“AT: Right, right. I think I read some statistic where 96% of marrying couples think they'll stay together forever, and you wonder what's going on with that other 4%.”

[INTRO]

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FT: Welcome to So Money, everybody. I'm Farnoosh Torabi. It is the Wednesday before Thanksgiving. Did you know that post-Thanksgiving is when engagement season ramps up? That's according to my guest, Aaron Thomas, who's here to talk about something that probably you wouldn't want to think about when you're first engaged or on your way to getting married. But it's important, and more Millennials are getting them, the prenuptial agreement.

Aaron Thomas, our guest is a three-time winner of Atlanta's Best Divorce Attorney and one of the nation's top experts in family law issues. He's a Harvard grad and a prenuptial and postnuptial agreement legal expert. He's the Founder of Prenups.com and the author of the new book, *The Prenup Prescription*, which walks couples through everything they need to know about the premarital contract, which he says can save your marriage.

Now, I know he might be a little bit biased, but it kind of makes sense, right? Who really needs a prenup? How much do they cost? How do you find an attorney? Should you DIY it? Aaron answers some of the frequently asked questions around prenups. If you don't have a prenup, don't worry. You can always get a postnup. Here's Aaron Thomas.

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FT: Aaron Thomas, welcome to So Money. This is very timely for us. There's been some questions coming to the show about prenups. My brother just got married. How did that the world is ready now more than ever to talk about prenups?

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AT: Oh, just perfect timing. Just ESP, you know.

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FT: Yes. Well, I look forward to learning a lot about you. I think that over the years, we have touched on prenups. So I really want to dedicate these next 30 minutes to answering as many frequently asked questions about prenups. But, first, tell us a little bit more about your practice, Aaron. You're behind Prenups.com, which by the way, congrats on getting that URL. Not a – was it just available when you wanted to get it? Or did you have to fight for that URL?

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AT: Oh, no. I wish it were available on GoDaddy when I got online to look for it. No. That was about a year in negotiation to get it. But, yes, I started Prenups.com in 2021 and just trying to provide like a go-to location for people to get a trustworthy prenup no matter where you are.

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FT: Because up until that point, what did you see in the industry that needed disruption? I think at least I can say from a mindset perspective how I would interpret a prenup back then which

was only two years ago, three years ago. But even like maybe, say, 10 years ago, the perception was that prenups were just for the rich. You got them when you had fancy lawyers. They were almost like also a prelude, a precursor to divorce.

But what did you see happening when you started Prenups.com? Now, you have a book as well. Like what did you see happening that was changing that suggested this is something that we need to make more accessible?

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AT: Yes. I saw a lot of the need for prenups from the other end in my divorce practice. So at this point in my career, I probably litigated over a thousand divorce cases, and I've seen the same problems crop up over and over. It struck me that things don't go wrong. They start wrong, and a lot of people needed help on kind of combining their finances at the beginning of their marriage so that they can, hopefully, avoid a lot of the pitfalls that I saw my divorce clients deal with over the years.

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FT: Well, let's get to the beginning of this. As a couple is getting married, why would a couple want a prenup? What is the purpose?

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AT: Yes. The purpose is to set forth the financial rules for your marriage and if necessary, yes, the end of your marriage. I look at a prenup as really like a partnership agreement for your marriage. Any good business partnership agreement worth the paper it's written on is going to spell out what happens if a partner leaves the business, what happens if the business comes to an end.

But that's not the purpose of the partnership agreement. The purpose of the partnership agreement is to lay out everybody's roles and responsibilities so that, hopefully, the partnership

runs smoothly. I think that that's how people should look at a prenuptial agreement, rather than simply just a plan for your divorce.

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FT: Do couples at this early stage in their lives together have those answers, though? I feel like, well, maybe then they need to work with a good attorney who can sort of give them just like the future and what you're seeing maybe in the divorce proceedings and protecting against that in their prenups.

But what are some of the things, besides just sort of these general like financial contributions, financial arrangements that couples need to be thinking about as they prepare their prenup? I'm also thinking for couples who may be like, "This isn't for me," which I think you'll say, obviously, is a big misconception. But what do couples often forget, and then they think they don't need a prenup?

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AT: Yes I think one thing that couples forget is how complex their finances actually are. A lot of us, we're getting married maybe late 20s, early 30s. We think, "Oh. Well, I don't really have anything. I've just got a little 401(k). I've just got a little bit in this condo. We really underestimate the complexity of our finances, particularly compared to, say, last generation.

For example, my parents got married in the 1960s. Back then, the average couple getting married, first of all, they got married on average at age 21, and they likely had – 401(k)s didn't really exist. Credit cards were just coming around. People didn't really have them. Between the two of them, they probably had one bank account, no equity in a house. Student loans weren't anything like they are today. You could work your way through a school. Something that's laughable in today's economy.

The average couple getting married today is usually average getting married closer to age 30, and that couple – those spouses are likely to have four to five bank accounts each, three or four credit cards each, student loans, car loan, maybe some equity in a condo, maybe a small

business. So the couple in the sixties who was getting married, if they were a business partnership, it would be like a startup in your garage, two people starting from absolute scratch. Whereas the average couple getting married today, it's like merging two already formed corporations, and you simply would not do something of that magnitude without giving it some real thought and, yes, putting some things down in writing about what are the rules of the road going to be.

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FT: Yes. It's definitely a mindset shift because not a lot of individuals, even if they are further along in their financial lives, would consider themselves corporations. But you're right. I joined a company a couple years ago in a partnership. It was a contractual partnership. It ended. But one of the things I really focused on and the legal team focused on for me was, essentially, the prenup. Like what's going to happen if this partnership does not work out?

I was lucky because we had that foresight. So applying that, again, to a relationship, a marriage, which by the way, is a contractual agreement, is how we should be thinking about it. What does it cost? Because I've heard some scary numbers. People avoid this because when you're getting married, you're paying for the wedding. Maybe you're also like trying to get your finances in order. You're paying off some debt and then, on top of that, throwing this legal bill. What are the costs really, and how can we make it more affordable?

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AT: The cost of a prenup drafted by an experienced lawyer really shouldn't cost you more than a few grand.

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FT: Really?

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AT: Yes. The average – I mean, it depends, right? You can go and get the Kardashian's lawyer and get into, I mean, five or six figures. But the average person can go and get a prenup drafted by an experienced attorney. Somebody that knows what they're doing is going to advise them on the kinds of things that they need to be thinking about for 10% of the cost of the average wedding today.

So if you kind of factor it into the cost of kind of planning your marriage, planning your relationship together, it's a drop in the bucket. Certainly, when compared to the cost of attorneys, what attorneys cost on the back end in a potential divorce, it really is a tiny fraction of that cost as well.

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FT: What are your thoughts on DIY-ing a prenup?

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AT: I am a little bit terrified of people DIY-ing a prenup. Some people, if you've been married before, you kind of understand the financial dynamics. You know what you're looking for. Certainly, you can at least get most of the way there before you go to an attorney and have the lawyer drafted up or use one of these other services. But I find for a lot of people, they don't know what they don't know. The kinds of things that sound like a good plan when you're 28 years old, and you're going into it, and you have an experience having a family and children and somebody taking a break from the workforce or the possibility of disability or moving for one spouse's job, all of the what-ifs that a lot of young couples haven't considered.

There are probably things that an attorney who has been around marriage and divorce for a long time can advise you about that may not be top of mind for somebody going into their marriage. So I think that people are well-served by working with somebody that knows how to advise them on their particular situation.

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FT: Years ago, when I was writing my book, *When She Makes More*, I spoke with a divorce attorney about prenups. He said, essentially, which I think is – it's a fact that you want a prenup if you don't first agree with your state's law as far as what would happen in a divorce. Is there any circumstance – are there any states out there where the divorce laws are pretty cool? You wouldn't need to rewrite or create a prenup to speak against it or create something that would override some of the state legislature.

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AT: Yes. I mean, I think what you said is exactly right. Everyone who is married already has a prenup, right? You either have a customized prenup where you have chosen the rules. Or you have the default prenup that is written by the state that you happen to be living in at the time. The problem with going with the state's laws is it gives a lot of leeway to a judge to whom your case is randomly assigned if you happen to get divorced.

So it's not just about a particular state having cool rules around divorce. It's that so much of it is it's really not rules about this is what happens when you get divorced. It's how much leeway does the judge have, and what can the judge consider. In most states – there's 9 community property states, and the other 41 are equitable division states. What that means is the judge can divide your assets equitably, but that doesn't necessarily mean equally. What the judges can take into account, it can be anything from infidelity to who worked the most, to who raised the kids, to what they had for breakfast, quite honestly.

You can walk into one courtroom, and that judge will look at a situation and say, “Yes, this case is worth five years of alimony due to the difference in income and the working history of the parties.” You can walk into the exact same courthouse one courtroom over, and the next judge can look at that exact same situation and say, “You know what? When I got divorced, I didn't need time to get a job, and I got back out there in the workforce, and I was able to pull myself up on my bootstraps, and this case doesn't deserve any alimony at all.”

Having that kind of potential differential in what the outcome could be for the most important financial aspects of your life and leaving that up really to chance, to a judge, is a huge, huge risk. It's unnecessary because you can just take that risk off the table by writing down on paper

what you and your spouse agree would be fair based on your values and your principles. So I think it goes beyond waiting on the court's rules. Why would you ever rely on an uncertain system rather than choosing the rules for your financial relationship yourself?

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FT: What do you find couples disagree on the most, as they're drafting their prenups?

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AT: That's a very interesting question. I think many couples come in saying, "Neither of us wants to pay the other one alimony if the relationship comes to an end." Those are the couples I like to work with the most because I get to spring on them some of the things they probably haven't considered. I mean, a thousand divorce cases in, there are a couple things I know that don't work, right? You can't go Dutch for life, right? You can't have two couple. You can't have two spouses living in the same household but in different socioeconomic brackets.

So a lot of couples will say, "All right. Well, both of us are working. We both have careers right now. Let's just both put in our 50% of the mortgage, 50% of the rent." But then when there's going to be a child that comes in and if one spouse is going to have to take on the lion's share of duties in the household, then all of a sudden, that changes the dynamic. The spouse who is taking a break from the workforce is all of a sudden at a much larger risk than the working spouse. If that couple breaks up, the one who has taken a break from the workforce, how long is it going to take them to get back to where they were? Will they ever get back to where they were financially or career-wise?

Some people have trouble wrapping their mind around the idea that there needs to be some kind of compensation for the spouse who takes a break from the workforce. Some people say, "Oh, you're lucky. You get to – I get to – I'm the one working hard, and you're home with the children." It's really that spouse who is taking the huge risk by depending on the working spouse for the relationship to work out.

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FT: I totally get that, and thank you for bringing that up. I was kind of trying to get to this point, but you brought it up just from that one question of you know what couples disagree on the most. It's that payout. But what about a couple who they both work, but one makes significantly more? So the other partner is sort of accustomed to a certain lifestyle.

I've heard from anecdotes of where that spouse who makes less but was accustomed to the lifestyle sues the ex for a settlement, essentially, because they feel entitled to maintaining a lifestyle. I don't know what judge would agree to that, but there are judges that have agreed to that.

So how do you protect against that perhaps in your relationship, where it's not that one spouse isn't working? It's that one person makes significantly more. Now, in a divorce, in the aftermath of marriage, they're going to go and live their own lives. The person who's making less is feeling a little like they're missing out.

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AT: Yes, yes, No. That's a great question. I mean, that exact issue is one of the reasons that I'm such a big proponent for prenuptial agreements because you're exactly right. One judge may find, yes, that you were in this relationship for 20 years, and you built up a certain lifestyle. Yes, I'm going to put an award in place of alimony or a division of property where you get to maintain that same standard of living.

I think that couples should decide what it is they are signing up for on the front end. If I am going to be married to you for 20 years, and I'm going to forego any kind of career, certainly I should get something in exchange for that. But how much is fair? So what a lot of couples will do is come up with kind of a formula and say for every year of the marriage, you earn kind of this amount of potential alimony if the relationship comes to an end.

Michael Jordan's prenup has been in the news kind of recently, and he has a situation where his wife would get a million dollars a year for the first 10 years of the relationship. If the relationship lasts longer than 10 years, then it switches to five million dollars a year. A lot of people hear that.

They have some kind of visceral reaction to it. They have some kind of feeling about it. But that is what they agreed would be fair.

From both of their perspectives, Michael Jordan isn't putting his billions of dollars on the line in a potential later divorce. From his wife's perspective, she has no privacy for the rest of her existence being married to one of the most famous athletes on the planet. What she agreed is that she's going to have some financial security if the relationship comes to an end. In a weird sort of way, there's a financial incentive for her to stay in the relationship.

So that's probably not going to work for my relationship or maybe for a lot of your listeners. But it's something that they decided between the two of them would be fair on the front end. What I've found is people are a lot more willing and able to come to an agreement on what's fair at the beginning of the relationship, when the trust is high, when communication is high, when they want to be aligned, when they want to be on the same page.

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FT: You pick up the idea of incentives and I wonder. As you're helping clients draft prenups and in some cases postnups, we can get into that in a second, too, because sometimes you get married too fast. You don't have time to kind of like think and plan for the prenup. But postnups are also an option.

But what – is there a fear that couples have coming in that if we have this prenup, it could incentivize or disincentivize the partners to stay or go? If you are of the belief that marriage will be hard, and I'm going to give it my all, then there could be another partner who's like, “Well, if there's an out, if there's an easy financial out, I'm going to take that and maybe not put in the 110%.”

I don't know. I'm just trying to – I'm speaking for invisible people here. But what do you hear in terms of some of these fears that couples have around the incentives to stay or go when there is a prenup in place?

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AT: Yes. I think pretty much everyone that I've come across who is getting married wants to stay married, right? So when we're talking about incentives, everyone wants to create ways to make the relationship work out.

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FT: You said pretty much. That means there are some that –

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AT: Right, right. I think I read some statistic where 96% of marrying couples think they'll stay together forever, and you wonder what's going on with that other 4%. But, no, I mean, I think that – for example, I mean, there are things that you can do without making any kind of perverse incentives in your agreement that benefit the longevity of the relationship. Everyone wants to incentivize themselves to stay together.

For example, I mean, it doesn't always look like five million dollars a year, right, if you stay in the relationship. For example, in my own prenup with my wife, we have an agreement where if either one of us wants to go to counseling, we're going to counseling. Either one of us can trigger this provision, and we have to do three sessions. We can trigger at least no more than one time per year. Then before we would be even allowed to file for divorce, we would have to do six counseling sessions. By putting those kinds of maybe not roadblocks but like putting those kind of provisions in place, you can create the framework where you give yourself a better chance to stay together.

Another example is we have what I call the annual shareholders meeting in my household, where it's on our calendar, and we wrote into our agreement that we would sit down at least once a year, and we would open up the books. We would make sure that all of the information about the household finance has been exchanged with each other. We would look at the year past and were there any big surprises. Do we have any expenses that we didn't account for? Then use that information to kind of realign and set the budget, set the goals for the upcoming year.

By putting some of these things in place, I think we give ourselves a better chance of staying aligned and, hopefully, hopefully, I'm not too naive in thinking that we're giving ourselves a better chance of staying together and our relationship working out.

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FT: I like that. I like that. I think you would agree that it's important to revisit the prenup as your marriage evolves, probably as children enter the picture. Or you're suddenly like taking care of an aging parent. There are different financial responsibilities. You buy a home. You start a business. You close a business. When does it make sense to revise a prenup?

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AT: No. Great point. Your financial relationship is not a set it and forget it type of situation. So I say at a minimum, once per year, to have that annual kind of shareholders meeting, where you can course correct. Make sure everything is still working for you. But, also, we'll typically write in that you'll revisit provisions within 30 days of any major life change. So a job loss, a job gain, a huge rate, a huge decrease in income, the birth of a child, purchasing a house, moving to a different location. Any of those types of major life events are a trigger to come back and make sure that things are working for you.

Most people don't have to go back and revise their actual agreement because, typically, an agreement is going to be written with enough flexibility. So for example, the most typical setup is what I call title-based prenups. So whatever is in my name belongs to me. Whatever's in your name belongs to you. Whatever's in joint names is a 50/50 asset. That just creates these kind of simple money buckets that allows you to adjust them on your own over time.

So you can – if you want this business just to be your project, and you want to both own the assets and then protect your spouse from the debts of that business, then you title that in your name only. If you are going to get a rental property but it's going to be a jointly run project, you put it in both names. You can take something that is in your name only and kind of contribute to the marriage. Put it in joint names if that makes sense. You can take money out of your separate

bank accounts and put them into a joint bank account or a joint brokerage account if that makes sense. So it does give you the flexibility to adjust on the fly.

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FT: Yes. You bring up an important point. I remember, again, when I was researching this years ago. The divorce attorney said that you want to be really careful about your financial co-mingling sometimes in a marriage. Like if you come into a marriage with your own debt, just because you're married now doesn't mean that the couple shares the debt. There's a lot of confusion around that, and I think it's important to clarify that.

Postnups, now, if you're 10 years into a marriage and you're like, "I think I want to get a postnup," I don't know. That smells like you might want to get a divorce. But I could just be pessimistic. What do you think? I mean, and I also want to ask you later before we wrap. Do prenups prevent divorce? But, first, a postup, what is that, and how soon or later can you get one, and who's that best for?

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AT: There's a few different flavors of the couples that get postnups. So the first is people who got their prenup too late, right? You got caught up in the wedding planning. Everything moved a little faster than you thought it was going to. Maybe you didn't hire the lawyer in time, and you're signing, essentially, what was your prenup after the date of the marriage.

Then there are couples who – many of the couples whose postnups I do, they basically realize that they are living with different rules in their household than what their state recognizes. So there are a lot of couples who they kind of keep their finances separate, at least in their own heads. Their income go into separate accounts. They both have their own credit cards. They pay their own bills. Maybe they have a joint account to pay for the mortgage and the utilities and the groceries and the kids' expenses.

But they, otherwise, keep their lives pretty separate, and they recognize that the state laws are not going to respect that kind of informal decision that they've made. They in their minds may

say, "This is my retirement account. That is your business. That is your brokerage account. This is my car." But if a dollar that either spouse earned over the course of the marriage touched any of those assets or debts, that is now comingled, and it's considered marital. It is the job, it is the duty of the person who wants to prove, "Oh, this should be my retirement account," to prove how much of that was from pre-marriage contributions and how much of it was from post-marriage contributions.

It gets really messy really quick, and so a lot of couples just say, "Hey, we already agreed between the two of us what's mine, what's yours, what's ours. Let's put that into a document that our court has to respect down the line if necessary." Then there are some couples who the postnup is the chance to try to save their relationship. So maybe there has been some kind of infidelity. Maybe it's physical infidelity, or it could be financial infidelity, right?

There's been some kind of instance where one spouse realizes, wait a minute. I've taken a break from the workforce for 5 or 10 years, and I could be really left out there if this relationship comes to an end. If you want me to work on this relationship, we need to put down in writing what my safety is, what my parachute is because I don't want to spend two years and 20% of our money in a courtroom, litigating over what I should get if I'm committed to this marriage. So, yes, let's work on the relationship. Let's try to make these things work. But let's at least put down in writing what would happen if it doesn't, so we're not making the lawyers rich.

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FT: It goes without saying that when you have a prenup or a postnup, the divorce, if that's what ends up happening, is much quicker, not only cheaper but much quicker than if you were to have nothing, and now you're beholden to the courts and a judge.

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AT: Right, right, right. I mean, it's so much cheaper financially but also the psychological and emotional cost of divorce. I can tell you from having seen so many go through it. It is best avoided at all costs. The average contested divorce case lasts a year. The average person, spouse, pays 15,000, so that's per spouse in attorney's fees. A lot of people pay much, much

more. Cases very often go into a year and a half, two years long. It is not unusual at all for spouses to spend 20 to 25 percent of their net worth on lawyers and litigation cost fighting over who gets the other 75 to 80 percent.

You can just imagine the impact that has on people psychologically, the impact that it has on their children. So, yes, messy divorces are best avoided at all costs. Either you have to stay married or you have to make your divorce as painless as possible. Both are legitimate ends in getting a prenup or a postnup.

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FT: Your new book, *The Prenup Prescription*, I want to read the subtitle. *Meet the Premarital Contract Designed to Save Your Marriage*. So that brings me back to my earlier question. Can a prenup really save a marriage, and do we have data for this?

[00:28:38]

AT: I think the data is forthcoming. This generation, as I'm sure you know, is way more likely to get a prenup than previous generations. I think the interest has increased fivefold over the past 12 years. But a prenup done correctly, yes, can save your marriage. It's no secret that one of the top, if not the top thing, that married couples argue about is money. That is a failure to get aligned on your money rules and your money practices at the beginning of your relationship. A prenup can certainly help with that.

I've seen so many relationships break down at least in some part due to lack of transparency around finances, a lack of communication around finances, a prenup to be enforceable. Each spouse has to disclose all their assets and debts to each other. Just that one step alone, that first step of getting a prenup can be something that is so hugely beneficial to couples down the line. So I look at it as signing a custom contract and helping a couple get aligned on what their money practices are going to be at the very beginning of the relationship when you can have the most positive impact.

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FT: Why do you need two separate attorneys? I've read this that it's best for each couple to have their own attorney. My husband and I are doing our estate plan right now. We have one attorney for that. He's been great, I guess, because he's not planning for our divorce, so to speak, but something worse potentially. So why is that the protocol, and how do you make sure that you have just as good of a lawyer as your partner?

[00:30:16]

AT: Yes. I mean, I think that couples should do everything they can to educate themselves on the options for prenups and agree on as much of what's going into the agreement between the two of them themselves. Then you're essentially having lawyers drafted up a document that you and your spouse already agree to. You have to have two lawyers because, technically, it's a negotiation like a business partnership agreement would.

I also think it's a good practice for each spouse to have a lawyer because you may have different fears. I may be fearful of my spouse's spending. My spouse may be fearful of how much we're saving in retirement, how those things will be split down the line or what would happen if she were home with our child at the time that a divorce happened.

So a lawyer can really hone in and have a one-on-one conversation with you. Find out what your fears are, what your needs are, what you need to do to feel secure in your financial relationship with your partner. Then suggest provisions specifically to address the things that are in your head that's keeping you up at night.

[00:31:24]

FT: Well, I think we covered so much in just 30 minutes. Aaron Thomas, thank you so much. Your book is called *The Prenup Description*. We'll put the link in our show notes. Is there anything else you think we should say really quick before we wrap that needs to be said about prenups?

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AT: Just that the investment in the communication about finances is really an investment in your relationship. The financial dynamics of your marriage dictate the personal dynamics of your marriage. So it's something that is so important and shouldn't be overlooked.

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FT: Aaron Thomas, thank you. Everybody, you can learn more about Aaron at Prenups.com. Thanks so much.

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AT: Thanks for having me.

[END OF INTERVIEW]

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FT: Thanks a lot to Aaron for joining us. His book, again, is called *The Prenup Prescription*, and you can learn more about the book and Aaron and prenups, of course, at Prenups.com. I want to see you back here on Friday for Ask Farnoosh, okay? Don't buy anything crazy on Black Friday. Stay away from all the marketing emails. Just unplug on Friday, except do listen to this podcast. Happy Thanksgiving, everybody. I hope it is So Money.

[END]