

PRE-NUPS AND ADULTERY

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Of course, most couples enter a marriage thinking it will be “happily ever after.” Because that’s not always the case, do you recommend pre-nups? Who are they best suited for?

That is a great question, as our recommendation of drafting a pre-nup depends on the people getting married. In general, the people who are best suited for pre-nups fall into one or more of three categories: People who have previously been married and unfortunately had a messy divorce; a person who has a family business or estate who does not want to risk having the business entangled in a divorce; and people who are looking to keep their assets separate. Pre-nups are usually best suited for people who fall into one or more of these categories; however, if you are not in one of these categories, this doesn’t mean a pre-nup is not the right choice for you. This is why it is always best to consult a family lawyer when faced with this decision.

Are there apps that my spouse may be using to hide his or her own infidelity?

Yes, there are many apps that spouses use to hide their adultery, and this number is growing by the day. The most significant development in recent years is the use of encrypted and cloud-based software. Apps with these features, such as Avira Vault and Signal, add extra layers of protection beyond the phone passcode that the non-cheating spouse must crack before they can access anything incriminating.

Many apps are making it easier for users to create accounts quickly without the need of a membership. Flīng, Viber, Zoosknd and Matūredates ask a few basic demographic questions to set up a profile and instantly get you connected to a network of people with similar interests. Other apps, like Calculator Pro+, Private Message Box, and FortKnoxster Crypto suite, hide their appearance by looking

like games or utility apps but, are private messaging apps made specifically for adultery.

How does adultery play a role in a divorce?

In our experience, most often, adultery is not the root of the divorce; it is a product of an already failing marriage. Proof of adultery is not the smoking gun many clients hope it will be to ruin their spouse in a divorce proceeding. However, there are still fault grounds available under the Texas Family Code which allow the other party to seek a disproportionate share of the community estate’s finances based on the other party being at fault for adultery. Usually, adultery of this nature needs to be especially egregious to qualify for a disproportionate share and you need to prove it in court. Further, there is case law that prevents a spouse from claiming adultery as the cause of the break-up of the marriage if that spouse forgave the spouse and moved on (i.e. if adultery occurred 10 years ago and the parties continued to stay married). As it relates to the children, adultery does not impact custody unless that spouse is making bad decisions introducing the children to their paramour, or the paramour has criminal/drug/alcohol issues. The primary concern of the court in a divorce is the best interest of the children and the preservation of the estate. If copious amounts of cash and gifts are being transferred to the paramour by a spouse, that spouse will be held accountable by the court to compensate the estate for wrongfully spending that money. In addition, there are other minimal advantages the other spouse may have both strategically (i.e. deposing the paramour) and financially in their case, but beyond that, adultery does not have a huge impact on the legal proceedings. It is very important, on either side of the coin, to make sure you have a knowledgeable attorney to help navigate through this touchy subject.

About the Expert

Armed with decades of experience practicing 100% family law, the women at McClure Law Group are talented, knowledgeable, and effective advocates. Kelly McClure, Managing Partner and CEO, Francesca Blackard, Managing Partner, and Kate Mataya, Partner, all navigate from the simplest to the most complex divorces, custody matters, division of assets, and pre-and post-marital agreements. They are also leaders in the collaborative law movement, which provides an option to clients looking to resolve their matters confidentially and efficiently outside of the courtroom. These women, along with their dynamic team of attorneys, serve their clients with a diverse set of strengths: decades of experience, financial acumen, creativity in negotiation, and extensive litigation knowledge. Kelly McClure is Family Law Board Certified by the Texas Board of Legal Specialization. The McClure Team has been recognized by their peers for their exceptional work and have been continually named as Best Lawyers in Dallas by *D Magazine*, Best Law Firms by *U.S. News & World Report*, Texas Super Lawyers by Thomson Reuters, Top Attorneys by *Fort Worth Magazine*, and Power Players by *Modern Luxury*.