

Oh Baby, That's a Big Contract

By Reg P. Wydeven
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As a lawyer, my practice focuses primarily on estate planning and elder law. Even though my practice is limited, I typically know what the other attorneys at our office are talking about when they reference various legal documents. While I may not see them every day, I know about writs of mandamus, IPOs, amicus briefs and letters of horning. But every once in a while I'll come across something I've never even heard of.

For example, while I was in the waiting room at my dentist's office, I came across a blurb in a celebrity gossip magazine about the reality TV show 'The Real Housewives of Atlanta.' Apparently, Porsha got into a spat with her boyfriend over her request that he sign a "baby-nup." Because I never heard of a baby-nup, I had to keep reading.

Thankfully Porsha explained that a baby-nup is "an agreement so we don't have to argue later. We can argue now!" Because that was not entirely helpful, I had to keep looking.

When I Googled "baby-nup," it turns out there is a babynup.com website. In fact, the term Babynup has been trademarked by Terra Burns from Happy Valley, Oregon. Terra was a family law paralegal who runs babynup.com. After witnessing terrible child custody cases at work, and her parents' own contentious divorce, Terra created Babynups.

Terra explains that all Babynups are unique, just like all families. But in general, they are designed to "allow unmarried parents to come up with an agreement so there is a clear understanding of the parents' intent to raise their child should their relationship status change and/or they become unable to work together." They typically cover topics such as "custody, parenting time, school and extra-curricular activities."

Terra is quick to point out that she is not a lawyer and the information on her website does not constitute legal advice. One question I had is the enforceability of the contracts. For example, if a parent fails to deliver a contractually-obligated 3 a.m. feeding or doesn't perform required diaper duty, what are the consequences?

Perhaps a Babynup isn't intended to end up in court if one parent fails to hold up their end of the bargain. The contract may just be a way for hopeful parents to spell out their expectations regarding parenting and the only ramification for violations is guilt. As a Catholic, however, I know how effective that can be.

Maybe Babynups are more similar to pre-prenups, another contract I'd never heard of. Apparently Facebook billionaire Mark Zuckerberg and his wife, Priscilla Chan, signed a pre-prenup, otherwise known as a lifestyle agreement, after they started dating.

Unlike regular prenups that detail the division of assets and support payments in the event of a divorce, lifestyle agreements address the number of dates a week, minimum time spent together, the division of household labor, limits on TV watching or cell phone use, and even the frequency of intimacy.

I am obviously behind the curve because a survey from the American Academy of Matrimonial Lawyers revealed that from 2005 to 2010, there had been a 39% increase in agreements between unmarried couples who lived together.

As a picky lawyer, I don't like the term "Babynup." The "nup" in "prenup" comes from the word "nuptial," meaning wedding. A Babynup addresses having a baby, not necessarily getting married. I would have called it a "Pre-conceive Motion." Trademark pending.

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