

Book Review

The Couples Contract for a Lasting Relationship

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Authors: **Ed Sherman and Bruce Janke**

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I found *The Couples Contract for a Lasting Relationship* by Ed Sherman and Bruce Janke to be another very informative Nolo Press publication. The authors' intent was to help couples develop a mutual understanding about how difficulties would be handled and how finances would be treated in their relationship. Two things stood out to me as I began reading the book. First, by use of a basic legally binding contract, couples could agree to have their marital disputes (including divorce) settled through binding arbitration rather than in court. Second, the authors were primarily encouraging the adoption of a basic contract for couples, not an elaborate agreement relating to the detailed financial affairs of the two separate parties, although examples of the latter were abundant in the text and could be easily included.

At times while reading this book, I felt disheartened as well as encouraged. I found it disheartening to think that couples, married and unmarried, who are supposedly committed to one another, need a legal contract to encourage them to act in each other's best interest. However, I was also encouraged by the authors' attempt to help couples work through these difficulties and establish processes that will give them the best chances of preserving their relationships without going through the often contentious and adversarial court system.

The first chapter of the book, "How a Written Agreement Can Benefit Your Relationship," seemed to be selling the idea of the book and attempting to communicate that the Couples Contract is very different from other prenuptial or marriage contracts. I found this helpful because I have never studied prenuptial contracts at length. Although the

chapter could have been shortened considerably, the authors' passion for the subject was apparent.

Sherman and Janke emphasize five primary benefits of the basic Couples Contract. The first is that the process encourages couples to make lasting and clear commitments to one another. Second, the contract establishes a process and identifies resources that the couple can access when relationship problems arise. The contract seeks to reinforce and remind the couple of the basic tenants of their relationship, which should include deep friendship, mutual regard, and respect. When the relationship is threatened, the process may include consultation with a pre-identified marriage counselor, clergy member, or self-help relationship program. Although the problem solving process established in the Couples Contract is not legally binding, it does plant the seeds in the beginning of the relationship that counseling and couples therapy is something that is desired and accepted by both parties.

Third, the Couples Contract can maintain consistency in the application of marriage and relationship laws by stating which state's laws will govern the relationship. Clearly, a family law attorney should review this section if you are relocating to a new state to ensure that it remains in force. In a few states, the Couples Contract may not be legally binding between unmarried partners, making it essential to check the state's cohabitation laws. Another issue that may threaten the legality of a Couples Contract is the discussion of lifestyle choices and preferences, such as division of household labor, intimacy, and other personal relationship matters. These are best left out of the Couples Contract and should be discussed in a separate agreement if the couple desires.

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Fourth, and seemingly most strongly emphasized by the authors, is the agreement to submit to binding alternative dispute resolution (binding arbitration and mediation) in the event that one spouse or partner seeks to end the relationship. This process is supported by the court system, and judges will generally refer the couple to mediation if such a contract exists. However, it is not clear from the book how this contract plays out in abusive relationships, especially because abuse can take so many forms. This unanswered question alone would make it imperative that couples get legal advice prior to signing such a contract. If the contract maintains protection for each spouse in abusive circumstances by not hindering their ability to quickly terminate the abusive relationship, then this built-in mechanism of arbitration and binding mediation may provide the couple with the best chance for preserving their relationship. One element of this is the mutual selection of a mediator that will respect the couples' wishes and also help the couple identify alternatives and solutions to their problems. The mediator must have a legal background in family law and also have a demonstrated track record in successful mediation. The last benefit put forth by the authors is that the Couples Contract frees individuals from the fear of emotionally exhaustive and damaging breakups.

The authors give many examples of how various family structures and situations can be addressed in the Couples Contract, including second marriages, stepchildren, young vs. grown children, and so forth. The authors raise very good points when it comes to children and stepchildren. A fundamental point raised is that the state will vigorously protect its authority to protect the well-being of children in the event of a divorce, so don't bother trying to use the Couples Contract to circumvent child-support laws. Another recommendation was to not include commitments to pay for college in the contract because that is a long time away and children may or may not adopt the same values as their parents regarding education and work. For these reasons, it is best not to expose yourself to a potential lawsuit from grown children or stepchildren demanding payment for "education" costs that you are unwilling to support.

The book also offers some excellent advice for older adults who are remarrying. The authors strongly recommend that, in such cases, all parties have their attorneys represent them in the process. The authors are also quick to observe that so called "Senior Agreements" are more for the bene-

fit of the children than they are for the partners in the relationship.

One of the largest chapters of the book is devoted to tailoring the Couples Contract to meet the needs of unmarried committed couples. Sherman and Janke refer readers to another Nolo Press book, *Living Together*, for more information about the legal rights and limitations placed on unmarried couples. Nevertheless, Chapter 7, "Variations for Unmarried Couples," contains key points that should be considered by all unmarried couples.

From the perspective of flexibility, a Couples Contract can be crafted to include many different areas of a couple's financial life. Some things, such as estate planning, are beyond the scope of the contract and should be included in other documents. The authors do a good job of discussing different ways in which debts, assets, and income can be separated between the spouses and some of the tax pitfalls associated with separating property and income in this manner. Although not always legally required, the authors strongly encourage that each party disclose their personal assets, liabilities, credit reports (especially if negative), and any other information directly affecting the party's financial situation. As with other custom tailoring situations, the authors strongly encourage that the couple utilize the services of an experienced attorney and/or financial planner when tailoring a Couples Contract for a specific financial purpose.

Although they mention it indirectly, I felt the authors did not give sufficient attention to the vulnerable economic situation of stay-at-home mothers. The authors gave several examples of one spouse taking time away from a career to care for a sick or ailing child or parent and that marital assets should be used to compensate the spouse and placed in a separate account. Little was said, however, about the couple who, with young children, chooses to have one spouse—predominantly mothers—stay at home with the children. Often, this absence from the labor market can last 5 to 10 years or longer, depending on the goals and values of the family. True, a monthly paycheck, as described by the authors, could work, and the stay-at-home spouse could be paid by the employed spouse. But, this solution is most often not representative of reality and may carry other financial implications. Simple suggestions, such as making maximum annual contributions to a spousal Roth or Traditional Individual Retirement Account (IRA) may be much more palatable than a monthly wage.

The Couples Contract could then be used to identify these retirement assets as separate from the marital estate. Perhaps the authors assumed readers would come up with their own ideas equalizing marital and separate resources, but explicit examples would be helpful.

The authors do a great job illustrating how religious beliefs can be incorporated into the Couples Contract and how that can strengthen the relationship of the couple. Sherman and Janke also discuss two prominent faith-based marriage contracts and identify the strengths and weaknesses of these contracts and how to incorporate them into the Couples Contract.

The Couples Contract for a Lasting Relationship gave me a new perspective on marital finances and how couples can put an agreement in place that will not only help clarify their financial relationship but will also provide them a predetermined process to follow when they face difficulties in their relationship—a process planned and intended to help the couple work through their differences and preserve their relationship. This book may not be very beneficial for the couples who have been married or together for many years, not because the content is not applicable, but because it may be difficult to get these couples who have established patterns to change their habits or adopt something new, especially if they do not feel a need to do so. However, for those couples who are not married but may be considering marriage in the near future or who are in relationships outside of marriage and looking for something that can potentially strengthen and/or clarify their relationship, the book is very helpful. Similarly, the book can assist young married couples who are considering ways to merge their finances and also protect their marriages.