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Family Law **UPDATE**

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Handling with care

Attorneys: Prenups can be dangerous if not crafted carefully.

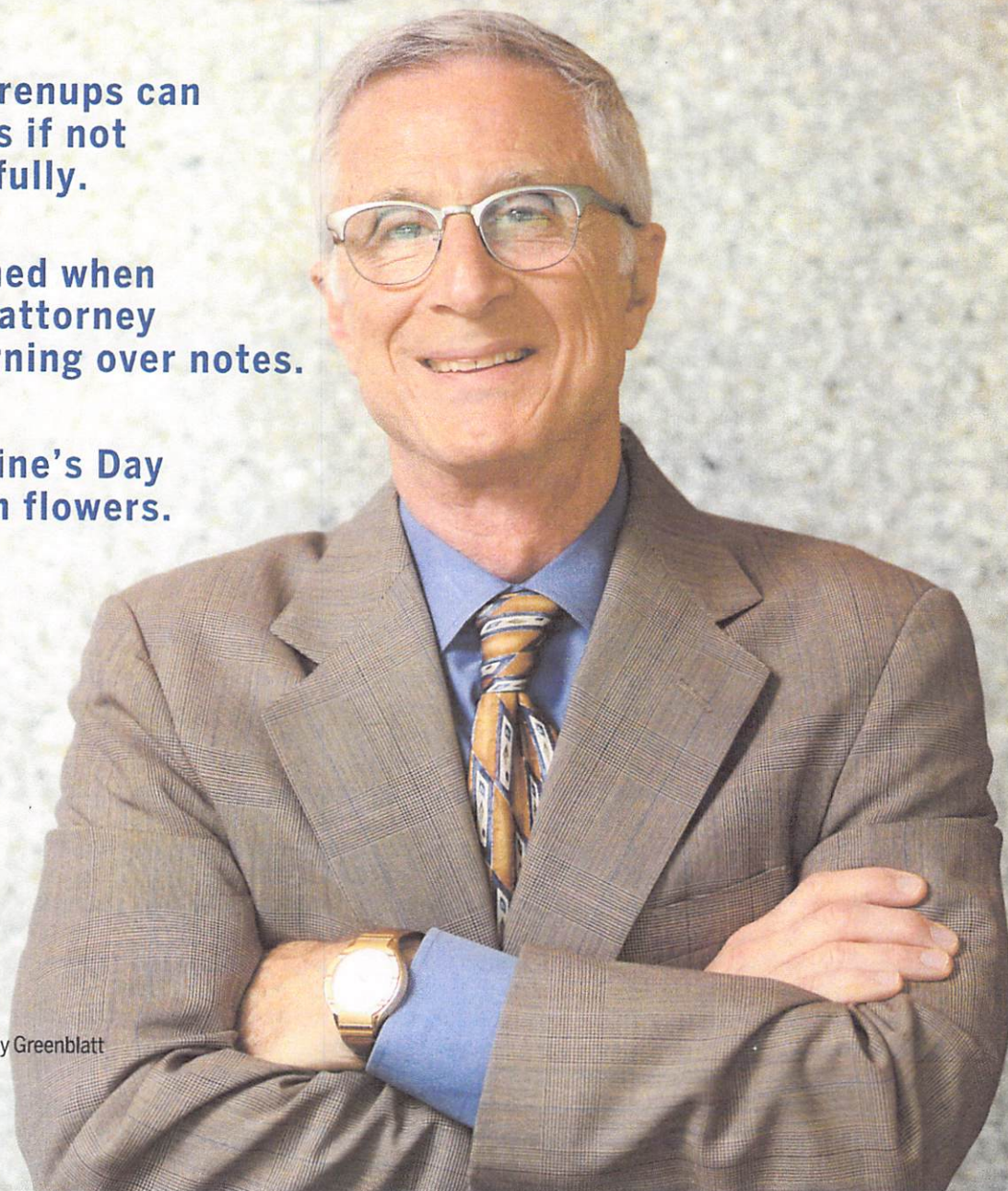
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Family law practitioner Jeffrey Greenblatt



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Attorneys: Prenups can be dangerous if not crafted carefully

By HOPE KELLER

Special to The Daily Record

The numbers aren't reassuring: Between 40% and 50% of first marriages in the United States end in divorce, with the rate rising to 60% for second marriages and to over 70% for third marriages, according to divorce.com.

No wonder prenuptial agreements are increasingly popular na-

tionwide. A 2022 Harris poll found that 15% of married or engaged respondents had signed a prenup, up from 3% in 2010. Prenups typically lay out the division of assets in case of a divorce or death.

Not all prenups are created equal, however. Maryland family law practitioners emphasize that a prenup must be precisely crafted, particularly if one partner will

be coming into the marriage with fewer assets.

"Prenup agreements are dangerous if they're not drafted carefully," said Jeffrey Greenblatt, of Joseph, Greenwald & Laake in Rockville. "Naïve people can get themselves into a pickle if they're not looking far enough in advance."

Greenblatt pointed out that the legal measure of whether a Mary-

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land pre-nup is fair is established when the agreement is signed, not at some point in the future.

“If somebody 20 years from now (discovers) they made a really bad deal – they waived alimony and property rights and it turns out that the husband was accumulating millions and millions of dollars in assets – unless (she) can find other reasons, the wife may be stuck,” he said. “It may be unfair now, but it wasn’t unfair at the time (she signed the pre-nup).”

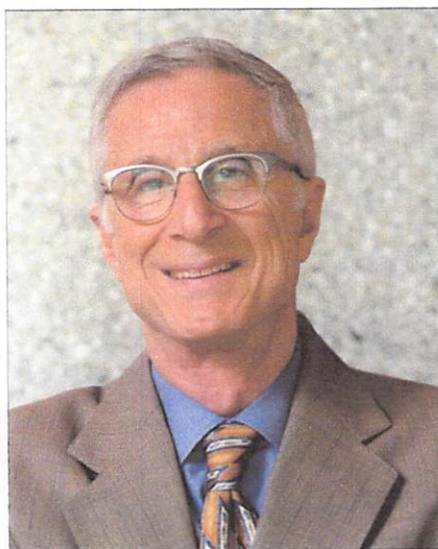
“Other reasons” can include fraud, coercion or duress, Greenblatt said, adding that in his 50 years of practicing family law he has handled just two cases in which a pre-nup was declared invalid.

In one, “the guy was a very, very wealthy individual and the woman was not and he sprang the agreement on her the day before the wedding,” Greenblatt said. “He sat her down and said, ‘I need you to sign this.’ So she had no ability to talk to an attorney, no ability to do any due diligence about the agreement, and he said to her, ‘I can’t marry you unless you sign this.’ Talk about duress.”

That said, pre-nups are rarely overturned in Maryland, even if they provide little to nothing to the economically nondominant partner.

In *Cannon v. Cannon* (2005), the Court of Appeals (now the Supreme Court of Maryland) upheld a prenuptial agreement that had been set aside by the Frederick County Circuit Court, which called it “draconian.” Under the pre-nup, which Wendy Cannon signed without benefit of an attorney, she waived alimony, retirement benefits and a monetary award in the event of a divorce and agreed to vacate the family home within 60 days of written notice from her husband.

Using a so-called overreaching test, the court determined that there had been neither unfairness



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or inequity in the result of the agreement or in the manner in which it was procured, writing: “We remain mindful that the basic issue is one of overreaching, not the mere absence of full disclosure.”

Likewise, in *Stewart v. Stewart* (2013), the Court of Special Appeals (now the Appellate Court of Maryland) upheld the trial court’s enforcement of a prenuptial agreement even though the pre-nup did not disclose the value of the future husband’s assets and though the future Mrs. Stewart signed it just four days before the wedding without the help of an attorney.

When presented with a pre-nup that could leave one partner financially stranded down the road, attorney Thomas Ries says he tries to negotiate changes.

“I end up sending letters to the other lawyer saying, ‘We’d like to propose that the alimony waiver disappear, that it sunset upon the first to occur: they have a child, they adopt a child or they’re married for five years,’” said Ries, who is of counsel with Wasserman Fam-



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Attorneys also advise their clients simply not to sign pre-nups that could leave them in the lurch years later. But not everyone listens to their lawyer.

“I can tell you that there are agreements that are signed by people who ignore what their attorneys tell them,” Greenblatt said. “If you are representing someone like that, protect yourself and write that person a letter and say, ‘I have recommended that you not sign this agreement.’ And make sure you keep that letter forever. Because at some point in time that person may say, ‘I’m going to sue you for malpractice because you didn’t tell me this.’”

Mary Roby Sanders, of Turnbull, Nicholson & Sanders in Towson, agreed.

“I’ve had attorneys going into pre-nups or a judge going into a pre-nup where I’m like, ‘Don’t sign this’ and they signed it anyway,” she said. “That’s part of the problem with pre-nups. (Clients say) ‘He’ll never do that.’ But things can change very quickly.”