



## Marital Charters and Prenuptial Agreements

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A new relationship is beginning. Two people are getting married. They are equals in many respects but not in every way. One person has significantly more wealth entering the marriage. What's a person to do? What should they do? In this article, we will explore how a collaborative approach offers an alternative to a typical prenuptial agreement. Consider the following illustration:

### ILLUSTRATIONS

Richard and Susan were both delighted to have found each other after each had lost a treasured spouse (for Richard, his second wife). Richard found himself excited by Susan's combination of personal grace and exceptional competence. She had not become a successful investment banker by chance. Susan was attracted above all by Richard's gentleness—in her experience an unusual and welcome trait in a markedly successful entrepreneur.

There was one thing that troubled Richard. That had to do with the ownership of his company. The avionics firm he had founded was finally ready to take off. It had developed new integrated systems that offered unprecedented reliability at less-than-current costs. Two major aircraft manufacturers had taken a keen interest in them and had begun testing them. Richard expected the value of his 80 percent interest in the firm would increase many fold over the next decade from its current \$20 million. This was the dream he had been working toward for a lifetime. He felt proud of his accomplishment but even more proud that his

daughter and son were instrumental in the final, key innovative breakthroughs behind their current success.

Richard was still the primary owner and CEO but he had been gifting shares in the company to his kids, both Executive Vice Presidents. Their interests were still small but he felt they deserved everything he had given them because they had been adding real value to the firm for the past couple years. Richard's fear was that his children would have to share the bulk of the value they were creating with Susan and possibly her children in the event of his death or divorce.

### Scenario 1: A Traditional Prenuptial Agreement

Richard spoke with Alex, his personal attorney, and was informed that his concerns could be managed. First of all, in their state, the current value of his interest in the firm would not become marital property when he married Susan. But he would need to carefully keep the preexisting business and the earnings from it distinct from their joint assets. On the other hand, with Richard still active in the business, most or all of the stock appreciation during the marriage would likely be considered a shared marital asset. But Alex explained to him that it could probably be protected through a prenuptial agreement. Alex suggested to Richard that Susan's business acumen should help her understand his desire to carve out this asset appreciation in order to be fair to the children who did so much to create it. Alex offered to draft an appropriate prenuptial agreement and send it to Susan for her attorney's review. Richard felt reassured that there was an effective and simple way to address his problem.

Unfortunately, it did not stay simple for long. Susan expressed surprise when Richard told her that Alex would be sending her some thoughts about a prenu. They did not talk further about it.

When Susan received and read the draft agreement, she was quite taken aback. It seemed so one-sided and presumptuous to her. It was all about Richard, his business and his two children. She had not felt competitive with his children before, but now she found herself struggling with those feelings. While she had not talked at length about the significant potential upside of her own financial

endeavors, she was nonplused that he appeared to totally disregard them, and felt like he disregarded her by extension. Suddenly, Richard seemed more like the egotistical entrepreneurs she was accustomed to. Her confidence in him, and in them as a couple, was deflated. But she did not want to jump to negative conclusions.

Susan called her attorney to get his advice and then called Richard to tell him that she wanted the lawyers to handle this. Their close relationship suddenly felt threatened by impersonal negotiations through their attorneys. The only positive thought she could muster was an appreciation that he brought this up before they told the world about their intention to wed.

## Scenario 2: A Marital Charter

Alex suggested that before he draft a prenuptial agreement, Richard sit down with Susan and discuss his concern about his daughter and son. In fact, Alex added, “You may want to talk a bit about some other issues. For example, does she know about the litigation with your first wife (to whom Richard had briefly been married before his second, long marriage)? Is Susan clear on how much traveling you do for work? Does she understand the extraordinary philanthropic commitments you have made? Have you told her about the explicit and implicit promises you made to your children regarding the future of the business?”

Richard thought that made sense and noted that Susan may well have her own concerns. He thought he should ask her about her issues before he raised his. Richard realized that their financial picture was not very simple, and wondered who could help them with these delicate conversations. He wanted to avoid a legalistic approach and recognized that the issues they faced were as much about relationships as dollars. There would be plenty of time for the attorneys to get involved once the two of them had a heart-to-heart.

At dinner, Richard described his conversation with Alex to Susan and the concerns that prompted the meeting. He asked her if she would be interested in sitting down with a professional who could help them discuss the concerns they both must be feeling. She replied that she had felt some trepidation about raising the

issue of the ownership of his family business and was not sure he realized the realities of her own business dealings. So, in fact, she was very interested in getting help to discuss all of it.

## THE GOALS OF MARITAL AGREEMENTS

Richard and Susan's story is not atypical of people contemplating marriage who have significant assets (or anticipate inheriting them). Few wealthy people are naïve about the challenges marriage poses and most have had some thoughts about how they can protect their interests as they combine their "valuables".

There are other people, too, who want to protect what they perceive as their interests. For example, some parents have worked hard for what they have acquired and do not want to risk a new son-in-law walking away in a divorce with half the house they want to give their daughter for a wedding present. They want their daughter to have an ironclad prenuptial agreement and may be willing to risk their daughter's relationship with her fiancée, or their own relationship with him, to get it. There are also grown children who fear the infamous "gold-digger" stepmother who will rob them of the inheritance they have dreamed of for years. They are ready to risk sacrificing their father's happiness to ensure he has a pre-nup so they can feel their economic future is adequately protected.

Whenever there are two people of wealth (present or future) coming together in marriage, there are players who have a vested interest in the assets. The question that always arises is: How can you protect some and not leave others feeling distrusted, poorly treated or taken advantage of? We know that attempts to protect someone entering marriage can strain family relations to the breaking point when they are not done properly. For example, pressure from parents to protect their assets from children's fiancés sometimes causes adult children to forgo their parents' blessing—and wedding—and strike out on their own, creating long-term rifts within families.

Nuptial agreements (either pre- or post-nuptial) are the primary method or tool that lawyers offer clients to secure this protection and create a sense of fairness. Nuptial agreements can be developed in a couple ways. Each person may hire

separate counsel and rely on him or her for advice, a situation that often degenerates into an adversarial environment. Or, the parties can agree to have one attorney draft their agreement. While this is a more cooperative approach, legal ethics prevent the attorney from having private, confidential discussions with either person. Thus, the attorney must draft an agreement without knowing if it truly covers the needs and desires of both people. The inability to speak freely about personal concerns creates fertile ground for ambiguity, future disagreements and malpractice claims.

In this article we will describe a process for use with married couples, or couples intending to marry, to help them stay out of conflict. It is called a Marital Charter. It is modeled after the Partnership Charter, which was developed out of years of mediating conflicts among business partners (non-family partners, siblings, couples, etc.). The Partnership Charter is the subject of the book called *The Partnership Charter: How to Start Out Right in Your New Business Partnership (or Fix the One You're In)* (Gage, 2004). It quickly became a tool to help people be aware of all of the complex interpersonal, financial, business and legal challenges awaiting them and provide a safe, structured process for negotiating their interests. Business partners and their attorneys use the charter process to thoroughly prepare for drafting various shareholder and partnership agreements. It helps people understand the full range of issues they face before they are asked to make decisions on the technical merits of legal issues. It also helps them feel more confident about their relationship and what they need from one another to succeed as co-owners.

This process is adaptable to the marital situations we have been discussing. In the same way that the Partnership Charter paves the way for preparing shareholder agreements, a marital charter can pave the way for preparing nuptial agreements. The marital charter process precedes the work on the nuptial agreements and sets a different tone. It creates an open, transparent and collaborative dialogue that minimizes the unintended negative consequences that may result from nuptial agreements, including hard feelings in the negotiation of highly sensitive matters and the probability of future litigation over the intent or meaning of the

nuptial agreement. This article compares and contrasts the two approaches and describes how the marital charter, which is a non-binding memorandum of understanding, does not replace the nuptial agreement, but provides a way for the parties to have meaningful discussions of very sensitive issues during an emotional period prior to completing the nuptial agreement. The marital charter captures the understandings and intentions of the parties in a structured but informal document that then serves as the basis for the nuptial agreement.

#### THE WAYS NUPTIAL AGREEMENTS AND MARITAL CHARTERS ARE SIMILAR

Nuptial agreements and marital charters are similar in some important respects. Both are simultaneously processes and products (negotiations and documents) and both depend on the assistance of third parties to guide the process and finalize the documents. Both processes are voluntary and seek to avoid future conflicts by clarifying and sometimes modifying the legal rights and responsibilities of the parties. Both documents are the product of negotiations and serve as foundations for relationships.

The following subjects are common to both types of agreements, but the focus may be different for each:

Financial aspects of the relationship

Roles and responsibilities of the parties

The relationship between the parties

Relationships with others

How to handle unexpected situations

Planning for the end of the relationship

Nuptial agreements and the negotiations preceding them are primarily focused on items 1, 2 and 6. The marital charters and the discussions preceding them are focused on all of the items.

Both processes deal with real and perceived inequities between the parties and

both attempt to anticipate and settle possible points of disagreement. Nuptial agreements are usually focused on how property is divided upon dissolution of the relationship. Marital charters, while dealing with property distribution, focus as well on how to handle potential problems and especially how the parties will work together to ensure the success of their relationship and their assets, appreciating the dependence of the financial and business success on the success of the relationship. Both nuptial agreements and marital charters have the power to open people's eyes to the reality of the other person and themselves, their strengths and foibles.

Either type of marital relationship agreement raises the bar and has the potential to "thin the ranks" of people who actually follow through with their wedding vows. One could declare this an unfortunate, unintended consequence; or it could be viewed as an effective way to diminish the probability of an unhappy marriage followed by a contentious divorce years later. Regardless of one's perspective, the discussions and negotiations necessary to develop almost any agreement provide additional information and opportunities for insight into one's partner and oneself.

Creating either document will have financial and emotional implications for the relationship between the parties. The specific quality of those implications may be different but it is useful to recognize that both processes will affect the relationship between the parties in some very basic ways.

#### DIFFERENCES BETWEEN MARITAL CHARTERS AND NUPTIAL AGREEMENTS

While the primary purpose of both nuptial agreements and marital charters is the same—avoiding future conflict—the methods employed are quite different. Nuptial agreements attempt to avoid future conflict by protecting someone's financial resources, whereas marital charters achieve the purpose by helping the parties achieve long-term clarity and stability in their relationship by reaching mutual understandings and agreements. The different methods result in very different experiences for everyone involved in the process. At the heart of it, either one person is working for his or her self-interest by striving to keep the

other person from receiving assets, or the couple is working together to figure out something that is fair for both of them. The former strategy can alienate two people and put them on opposite sides of the table whereas the latter can align two people and put them on the same side of the table. Working for personal gain emphasizes differences, inequities, and creates an adversarial, confrontational climate. Working together emphasizes the similarities and levels the playing field. Given that creating an intimate, sharing union of the wife and husband is the fundamental objective of a marriage, it is obvious that the collaborative approach is far more appropriate than an adversarial one when negotiating agreements about the nature of that relationship.

### Differences in Emotional Tone

The experience of negotiating nuptial agreements and marital charters is quite different. The tactics associated with the process of negotiating nuptial agreements (e.g., positional bargaining) are not conducive to maintaining or strengthening the relationship between the parties; in fact, they frequently have a corrosive effect. In positional bargaining, positions usually reinforce unequal power and the advantaged position of one person over the other.

It is almost inevitable that people being legally cut out of certain assets experience a devaluing of themselves and what they bring to the relationship. In the most common scenario, nuptial agreements cut one spouse out of certain financial assets, and send a clear message that financial resources are highly valued and other resources that contribute to making the relationship successful are not valued in any meaningful way. This can only be a deflating and disempowering experience. “When nuptial agreements are used in this manner, they almost invariably mean trouble for the marriage” (Margulies, 2003, p. 432)<sup>1</sup>. The competitive, adversarial nature of nuptial agreements risks causing permanent damage to the relationship, whether before or after it becomes official.

“Positional bargaining is most appropriate when there is no continuing relationship and only a single issue is in dispute. By contrast, interest-based bargaining engages both sides in a mutual pursuit of solutions to common

problems” (Margulies 2003, p. 421).

The process of negotiating marital charters is collaborative and it supports and builds upon the trust that exists between the parties. The positions that arise out of a collaborative, interest-based process are different than the positions that arise out of an adversarial, position-based process, which is important, because as Margulies points out, each negotiating position is interpreted as an emotional proposition. The different tones associated with the two processes—adversarial versus collaborative—are probably responsible for the different emotional consequences to the relationship, one negative and the other positive.

The most obvious difference between nuptial agreements and marital charters is the difference in the pattern of communication between the two processes. In the nuptial agreement process, the face-to-face communication primarily takes place separately and in private between the parties and their respective attorneys. Although the parties may talk with each other about what is being negotiated, the main action is the negotiation between the attorneys.

In the marital charter process, almost all of the important communication takes place face-to-face between the parties and is facilitated by a mediator. This difference between the two communication processes is enormous. The difference is not just who is present in the room and who speaks to whom, but also what gets said and how it gets said. How a person who has significant assets talks to an attorney is very different from how she will speak with her spouse-to-be. Not only that, what it feels like to hear something of substance directly from your fiancée is different than what it feels like to hear it from your attorney. The emotional reactions in the two different settings are very different. Similarly, it feels very different to read legal terms and conditions that your fiancée’s attorney drafted than it feels to hear a proposal first-hand from your fiancée.

#### Differences in Substance

Just as the experience of negotiating marital charters and nuptial agreements is different, the substance of the two is often quite disparate. The language in nuptial agreements is crafted by attorneys in a legalistic style. The language in

marital charters is crafted by the people in a narrative style and sets forth their feelings and conclusions. Nuptial agreements are designed to protect and give an advantage to financially stronger parties by keeping resources or assets separate (individual advantage). Nuptial agreements generally define the interests of more affluent clients in terms of technical rights and obligations, and for the most part, nuptial agreements are concerned with what happens in the event of their death or divorce.

Nuptial agreements typically enhance the power of wealthier parties (Margulies, 2003). These power plays have an emotional effect on couples that can threaten the health and stability of marriages for years to come. When the relationships between spouses are challenged in the everyday course of events, as they inevitably will be, less affluent spouses may feel like they are being victimized all over again. While negotiating nuptial agreements, financially weaker parties may get the message that they are somehow a threat to the other, and since the financially stronger parties need special protection, they should acquiesce. Another message is that the contributions to the marriage of the wealthier parties are more important than those of the less affluent parties (Margulies, 2003).

Marital charters tend to level the playing field between parties of unequal power or financial resources, in part by expanding the range of questions being considered. Rather than having discussions and negotiations focus solely on the area of inequality (often financial), marital charters facilitate discussion of a wide range of topics (e.g., interpersonal behavior, values, lifestyles, marital happiness, relations with children). They explicitly call on the parties to identify all of the contributions—intangible and tangible—they are making to the marriage and the rewards—intangible and tangible—they expect to find. Marital charters create a balanced process by placing money in the context of a total relationship.

Marital charters also tend to level the playing field between parties by giving less affluent parties the opportunity to ask questions and understand the issues on the table. The questions often revolve around understanding how resources can be shared for the mutual benefit of the parties, or why they will remain with one party and not be shared. The answers often raise awareness of the problems that

could develop if the disparities between the parties are not addressed adequately. Marital charters define the interests of the parties as broadly as possible and attempt to consider every type of potential circumstance (e.g., an investment or a company's resounding success or total failure).

### Other Differences

While the negotiations that result in both types of documents are essentially voluntary in nature, the dynamics surrounding a nuptial agreement can often be driven by the dominant party or be the result of pressure, sometimes subtle, sometimes not, from family members and others.

Lawyers are the primary architects of nuptial agreements. They represent and act as advocates for their respective parties in the negotiations, and the success in getting the parties to sign nuptial agreements rests largely on the efforts of the attorneys.

The parties themselves are the primary architects of their marital charters. Even though people frequently have mediators assist them with their charters, they still perceive themselves to be the primary architects of their marital charters. If they succeed in completing their marital charter, they are inclined to give themselves credit; if they fail, they likewise tend to put the onus on themselves.

### MARITAL CHARTERS PAVE THE WAY FOR DEVELOPING NUPTIAL AGREEMENTS

In the same way that partnership charters are the precursor to developing shareholder or partnership agreements, marital charters are the precursor to developing nuptial agreements. They do not replace nuptial agreements but rather make it easier to draft nuptial agreements because the thoughts and intentions of both parties are spelled out in great detail in advance. More is covered and documented in marital charters than is needed or desired in nuptial agreements. Marital charters are not meant to be legal documents and usually state that explicitly. Marital charters are documents that help sharpen mutual understandings, memorialize them, and convey to others (specifically attorneys) the intentions and wishes of the parties. Marital charters are like insurance in that

they substantially decrease the probability of both conflict in the marriage and subsequent challenges to nuptial agreements on such grounds as ambiguity, coercion, fraud, misrepresentation, etc.

An example of the kind of information that is included in marital charters and not in nuptial agreements is information about the individuals' personality styles and values. In the course of coming to a more comprehensive understanding of the roles each spouse may play in the business owned by one spouse's family, it is important or helpful to know something about the individuals' personal styles and values. Each fiancée may take a personal style assessment and a personal values assessment to learn more about their styles and values and explore how they affect their ability to work closely together. They would then document the data, the gist of the discussions, and importantly, the agreements each made to the other to work more effectively together given what they now understand about their similarities and differences. While the summary of these discussions is usually very meaningful to the two people, and documenting the agreements they reached can be key to successfully working together, there is little need to have that information in their nuptial agreement.

Attorneys preparing to write nuptial agreements for clients generally prefer to have more information about their clients' wishes and interests than less. They typically know what to cut. It is harder for them to work with too little information, inaccurate information, or information that conveys only one spouse's ideas and perspective than it is for them to work with the whole picture. Attorneys who only hear the story from their own client are like puzzle masters trying to piece together a complex puzzle with fewer than all of the pieces. Attorneys can reduce the probability that nuptial agreements will later be characterized as "contracts of adhesion" by having the parties voluntarily reach their own consensually derived agreements on a range of issues by using an open, collaborative marital charter process.

## TWO EXAMPLES OF THE BENEFITS OF USING MARITAL CHARTERS

The following are two examples of the benefits of using marital charters.

## One Spouse Enters the Marriage Owning a Business

In situations where one spouse enters the marriage owning a business or professional practice, nuptial agreements are used to prevent the conflicts that may arise over whether or not the owner's spouse should receive a share of ownership in the business or some of the credit for an increase in the value of the business during the marriage. In equity distribution states, the increase in value could be considered marital property and be shared upon divorce. In such situations, nuptial agreements may stipulate that the non-owning spouse will not share in the ownership and will not be entitled to any share of the increase in value of the assets during the marriage. Marital charters are used in these situations to allow the future spouses to explore their respective interests and the rationale for any potential agreement on the subject.

Depending on the circumstances of the parties (e.g., work experience and interests, children by earlier marriage), there are many other issues that the mediators would help them discuss, including the following:

Each person's desire to work together

The challenge of working together and how they might explore their respective personal styles and personal values to help them agree on how they could work together more effectively

Each person's expectations of the benefits of one of them owning a business or both becoming business partners

The contributions each person might make under various scenarios

How they would handle serious financial pressures

What they would do if the business-owning spouse were to die or become incapacitated

The role of each of them in the business

Whether other family members (children, sibling or others) could work in the

business or possibly co-own it

### One Spouse is from a Family with Significant Wealth

Nuptial agreements are sometimes employed in situations where one spouse comes from a family of significant wealth to prevent the other spouse from being able to claim any interest in the trusts or other assets of the inheritor in the event of his or her death or their divorce. The son or daughter of the wealthy family could come into the assets through gifting or trust distributions. Marital charters are used in these situations to allow the future spouses to explore what it means for both of them to be married and part of a family of wealth. We have seen many families where there was little or no open discussion of the impact of family trusts, the role of trustees, and the rights and responsibilities of beneficiaries. Often people suffered dearly because of the naïveté and misunderstandings that resulted from the lack of discussion.

Who should be involved in these discussions is an interesting question. Parents with grown children may be wise to engage them in discussion in a collaborative family estate planning retreat ( see Gage, “Estate Planning as a Family: A Collaborative Approach,” National Center for Family Philanthropy, 2005). Such retreats can help parents think clearly about their long-term goals and lessen the chance that they will put their adult children in what we call “accidental partnerships,” essentially, business or coownership arrangements doomed to fail and force families to go through gut-wrenching, multigenerational conflict. ( See Gage, Gromala & Kopf, “Successor Partners: Gifting or Transferring a Business or Real Property to the Next Generation, ACTEC Journal, 2004 for a discussion of how parents can avoid creating accidental partners of their children).

### PREPARING A MARITAL CHARTER

Completing a thorough, effective marital charter is not a quick or easy process. Charters need to address a wide range of interpersonally sensitive and technically complex subjects. Few professionals are aware of all of the subjects that are important for couples to discuss, and few are trained to facilitate the discussion of these subjects. Two resources that can be indispensable are appropriate

professional assistance and a comprehensive structure that lays out the subjects for consideration and methods for facilitating the discussion.

Professional mediators can be an invaluable resource in facilitating conversations among the parties and helping them negotiate agreements. A team of two mediators (one with a background in psychology and the other with a business-related background) is most effective and efficient in developing charters, in our experience. The facilitators assist the principals to identify the personal, financial and business issues to be explored, deal candidly with those issues, and help them negotiate collaboratively to reach concrete, consensual agreements. At times during the negotiations, technical input from the principals' attorneys and accountants can be indispensable. The professional advisors always play a central role when the agreements reached in the charter process need to be translated into legal form.

David Gage's book on the Partnership Charter provides an overview of the topics to be considered and methods to be used in any charter process (Gage, 2004). There are, of course, some differences in the contents and approach of business partnership charters and marital charters. In addition, every marital charter will be somewhat different depending on the particular circumstances of those preparing it. The Appendix to this article illustrates some of the unique features that may be found in marital charters. It includes a model of a marital charter that Richard and Susan, the couple presented at the opening of this article, might draw up to address their concerns.

## APPENDIX

### Abbreviated Sample Marital Charter

[Note: This marital charter is meant to be an example only. Couples must develop their own unique charter that expresses their own situation, personalities and circumstances. No charter is perfect or can serve as a boilerplate for another couple. This sample reflects many of the topics and much of the tone of a full marital charter but out of editorial necessity, it is less extensive than an actual charter. In some places below, we have specifically indicated with ellipses that a subject was explored in more depth. In all areas, this sample should be viewed as suggestive and not comprehensive. The extent and subject matter of individual charters will vary; some couples may wish to deal only with the circumscribed issue, or issues, that led them to professional assistance. Others may wish to explore all of the subjects included here, as well as others. When suggesting to clients that they develop a charter, the value of a comprehensive process should be made clear but in the end, their taste and tolerance for such a process should be respected.]

### MARITAL CHARTER

#### Introduction

We, Richard \_\_\_\_\_ and Susan \_\_\_\_\_, with the help of our BMC facilitators, our attorneys, and our financial advisor, have prepared this Charter. Our purpose was to learn more about what each of us brings to our marriage, emotionally and tangibly, and to agree on approaches that will help us manage the material aspects of our marriage in ways that will not detract from our loving commitment to each other.

We originally became interested in preparing this Charter because of Richard's concerns about the disposition of his ownership interest in RSR, Inc. in the unlikely event of our divorce or when one of us dies. Once we began exploring that issue and became familiar with the Marital Charter as a way to address such matters, we decided to have much more wide-ranging discussions that would

prepare us better interpersonally and legally for the enormous, wonderful changes occurring in our lives. We have learned a great deal about each other and how we can work together to anticipate and resolve challenges that are probably inevitable. We have also arrived at a set of agreements about our assets that we believe will meet our needs and those of our children. In the course of creating our Charter, we have also had joint conversations with our children and they have expressed appreciation and understanding for what we are trying to achieve.

While we do not intend for our Charter to be a legal document, one of our primary purposes in creating it was to have a joint personal document that would serve as a guide to our respective attorneys in helping draft a prenuptial agreement. While they will have some questions for each of us and will fine-tune many of the technical aspects related to our intentions, we believe we have collaboratively and thoroughly described in these pages our desire to bring our lives and our assets together in a way that will be successful in the long term.

1. Vision : We are entering into our marriage because of our love for each other and our desire to fully share our lives with one another. We do not intend to carve out separate property islands of assets that are off limits to the other. This is not a “limited liability” arrangement, but a comprehensive union. Therefore, we want to pool all aspects of our lives as much as possible. We want to spend as much time together as possible, share our close friendships, combine our financial assets, collaborate on our philanthropies and, above all, see ourselves as having one integrated destiny. This Charter should, and does, reflect our passion for being “as one.”

Nonetheless, we recognize that we could alienate our respective families if we converted all of our assets to joint marital property as soon as we are married. In the short run, it could be unfair if one of us died suddenly. Thus, we will keep many of our assets separate at first but will treat all of our income as joint marital property. Over time, most of our assets will be systematically converted into joint marital property in accord with the schedule described below. There are, however, certain areas, where for practical reasons or fairness to others, we recognize that it is appropriate to permanently segregate some aspects of our

lives and assets. We identify these exceptions in this charter. They are truly exceptions and not the rule. This is very important to us and is the reason we stress it so emphatically.

2. Personal Styles : We have both taken the DiSC styles assessment and the Personal Values test and discussed them with one another and our facilitators. We were not surprised that we both have DiSC Developer profiles with Dominance as our most prominent personality dimension. This has served each of us well as entrepreneurs. Being Developers should also ensure that the energy, interests and creativity we value in one another will enrich our marriage. But we recognize that, in our marriage, we should not try to assert dominance over one another. We both commit to utilizing the collaborative communication and decision-making styles that we practiced while working on this Charter.

3. Personal Values : As with our styles, we are very similar in our personal values with the exception of Spirituality and Humanitarian. Richard is far higher on Spirituality and Susan is higher on Humanitarian. The high Spirituality is demonstrated by Richard's beliefs and intense involvement in the Catholic Church. Susan professes no religious affiliation but cares deeply about people and their welfare, and thus her high score on the Humanitarian value, which is reflected day to day in her philanthropic activities. Susan commits to accept Richard's involvement with the Church and we both understand that this is an area in which we will not fully share one another's life. Richard appreciates that Susan lives the kind of life that any believer would aspire to and that he admires her for her humanitarian instincts.

## Susan and Richard's Personal Values

(Differences of 5 or more levels are significant)

Susan's Personal Values		Richard's Personal Values
Theoretical	—	Spiritual
Humanitarian	- - -	Theoretical
Individualistic	- - -	Materialistic
Power-Seeking	—	Power-Seeking
Materialistic	- - -	Individualistic
Aesthetic	- - -	Ritualistic
Ritualistic	- - -	Humanitarian
Spiritual	- - -	Aesthetic

4. Contributions and rewards : We have, in some sense, been surprised and gratified by the wide-range of contributions that we have identified that each of us brings to our life together. In the table below, we listed some of the things we think we are contributing, as well as what we want to get out of our marriage.

### Susan's contributions

- Substantial current income
- \$5mm in investments
- \$5mm retirement plan
- Home and grounds
- Extensive circle of friends
- Rare aesthetic sense and art collection
- Vivaciousness and energy

- Sense of humor

#### Richard's contributions

- Substantial current income from investments and RSR, Inc.
- \$2.5mm in investments
- \$1.5mm retirement plan
- Town house
- Lake house
- Boundless curiosity
- Solid relationships with children and grandkids
- Sensitivity

#### Susan's rewards

- On-going excitement in life
- Richard's company and sharing of experience
- Being cared for when needed
- A mate for the rest of my life

#### Richard's rewards

- Intellectual and physical intimacy
- A relationship with the most giving, generous person I have ever met
- Susan's company and sharing of experience
- Access to Susan's friends

5. Roles and responsibilities : We have identified the following roles and

- responsibilities that we will share, or individually take responsibility: a. Management and maintenance of our properties (including hiring and oversight of household help): Richard
- b. Budgeting and money management: Susan
- c. Legal and insurance: Susan
- d. Arranging vacations: Joint
- e. Cooking—general: Joint; for company: Richard
- f. ...

In all of these areas, we expect to consult with one another on all matters of consequence, and act unilaterally on routine matters. When in doubt, we will consult and decide jointly.

6. Money : This area has numerous facets so we will address them one-by-one.

a. Pooling resources: We list below our common objectives regarding the treatment of our assets once we are married. The legal and financial mechanisms for implementing these objectives will have to be agreed upon in consultation with our attorneys and other advisors. As discussed below, we recognize that legal and tax considerations may require us to modify our objectives in some respects but we are committed to proceeding in their spirit.

We intend that all of our respective real, personal and financial assets will become marital property within three years with the following exceptions:

i. A portion of Richard's interest in RSR: In accordance with a long-established understanding and in light of the respective contributions of the members of the family to the business, 46 2/3 percent of Richard's 80 percent interest in the company should be transferred to his children (or, possibly, to a trust benefiting them) so that he and each of them will then hold a 1/3 interest in the company. This should be accomplished at no cost, or the minimum possible cost, to the children and preferably before our marriage date. Richard's remaining interest

will become part of our marital assets. A buy-sell agreement should be entered into among all of the parties that will enable Richard's children to buy—at a fair market price and on realistic terms—any interest in the company that may come to be controlled by Susan individually in the unlikely event of our divorce, or upon Richard's death.

ii. Susan's house and grounds: In accordance with a long-established understanding, this property will remain Susan's individually until her death and should then pass to her daughter, Melissa, who has occupied it for many years.

iii. Items of sentimental value listed in Appendix 1.

We have decided on this plan after serious and lengthy facilitated discussions with one another and with our children. We have all agreed that this approach will result in a fair and reasonably balanced distribution of our assets in both generations.

b. Expenditures: We will confine our spending to the amounts stated in an annual expense budget developed with Terry. We will each consult the other before making any material expenditure (>\$2,000).

c. Estates: Within three years of our marriage, we plan to have completed our joint estate planning. We will do our estate planning jointly and continue involving all of our children in a collaborative estate-planning process. It is our intention that all of our children share equitably in our marital assets upon our deaths. Each of us will have discretion over the disposition of our non-marital assets but we will consult with one another concerning this.

d. Investment strategy: Susan has followed a conservative investment strategy and Richard has pursued an aggressive investment strategy. In the first year of pooling our portfolios, we will work to adopt a moderate strategy with 60 percent in equities and 40 percent in bonds. We have reviewed various options and shall invest through Tanner-Martin Investment Advisors using the investment funds managed by DFA.

e. Professional advice: We have developed this section of our Charter with the

assistance of our facilitators and limited input from our other advisors. We will consult with our legal and financial advisors to ensure that our intentions are achieved with minimal adverse tax consequences. If we are advised that any of our intentions cannot be practically implemented or would prove contrary to our underlying aims, we will work with our advisors to rework the agreement in a more practical manner.

7. Decision-making : As indicated throughout this Charter, we intend to make significant decisions jointly. We both commit to seek advice regularly from our trusted advisors and to use them to help ensure that our decision-making does not become a locking of our “Dominance” horns. We believe it will be advantageous for us to arrange a two-day period annually when we will devote ourselves to reviewing all of the matters covered in this Charter and other important aspects of our married life. This will help us assure that important things are not going unsaid.

8. Expectations : In earlier sections of this Charter we expressed some of the expectations we have of ourselves and one another, but we recognize that unmet expectations are a key source of friction in relationships, so we are trying here to make explicit more of our expectations of ourselves and one another.

Susan’s expectations of Richard

- You will treat our vacation plans (for at least 6 weeks annually) as sacrosanct.
- Will help me more fully understand your spiritual commitments.
- Will keep working on your anger.
- Will not hide any of your financial or other dealings with your children.
- Will be sensitive to my children and my need for time alone with them.
- Will demonstrate a genuine desire and interest in art collecting if you want to be involved.

Richard’s expectations of Susan

- You will make me part of your art collecting life.
- Will think of my grandchildren as yours as well.
- Will tell me when the time I spend working feels like too much.
- Will appreciate the special relationship that I have with my college buddies and tolerate our annual get together.

#### Susan's expectations of herself

- I will let Richard know when I have an issue—not sweep it under the rug.
- Will be responsive if Richard wants to cut back on our work lives sooner than I do.

#### Richard's expectations of himself

- I will not let work interfere with our plans to be together.
- Will defer to Susan as much as possible on small points.
- Will try to be more intimate and open with Susan.

9. Fairness : We have covered a great deal of ground in this Charter. Each of us has tried to be generous— in the spirit of the relationship we are entering into. But it is important that the balance of the various commitments we have made seem fair to each of us. We have reviewed all of our agreements to this point and are both very satisfied that it is fair. We want to be explicit that we are both very comfortable with the assets we have carved out of marital property for the benefit of our children and their children.

10. Scenario planning : For all of our careful planning, we will no doubt face critical challenges as a couple that we have not yet anticipated. We know we cannot plan for everything but we wanted to engage in a little scenario-planning exercise that would open our eyes and thinking to what could happen, and do some contingency planning to ward off being blindsided, and make us more

prepared to cope well with the “unexpected.” The following are hypothetical situations that we discussed and how we handled them. a. End-of-Life Scenario : Richard is fatally ill and unable to make his own decisions. He has no clear directive regarding his care and Susan informs his family that she has decided that only palliative measures will be taken. His children are violently opposed to her decision.

Guideline: This scenario prompted us to have our attorneys prepare “Advanced Healthcare Directives” documents that we have jointly discussed with our families. They fully understand the documents specify our intent, as quoted, that neither of us would want “... any medical intervention to extend my life when the probable result would leave me mentally impaired or physically handicapped to the extent that I would be dependent upon artificial nutrition and hydration or I would be dependent upon others to feed me and care for my hygiene.”

Our families also understand our desire as set forth in the document that, “If I have received medication that could impair my ability to think clearly, the Healthcare Provider shall not ask me to make the decisions. Under these circumstances, the decisions regarding my healthcare shall be made by my agents, not by me.” We have given copies of our Directives to all of our family members and our healthcare providers. We have named some family members as alternate agents and they understand and agree to carry out our intentions. Our Advanced Healthcare Directives are identical except for the names of the agent and alternate agents.

b. Vacation Interruptus Scenario : Richard’s two children are running RSR Inc. and they believe the company is having a business emergency and only their father has the skills and experience to help it recover. They implore him to cancel his around-the-world vacation with Susan one week before we are scheduled to depart and come in and devote himself full time (and more) for an extended period. Susan does not believe it’s a real emergency and Richard has doubts as well.

Guideline: When dealing with this Susan-originated scenario, Richard admitted that he had put off creating a real board of directors for the company. He thought it might be a good idea “some day” but was doing nothing to make it happen. Now, faced with this scenario, Richard agrees to immediately begin the search for four qualified business people with national (possibly international) experience to complement the semiofficial board that was comprised of the two children and him. In any scenario like the one Susan described, he will rely on the decision of the board, especially the outside members, so he is not caught in the middle, between his kids and Susan.

11. Conflict prevention and resolution : We recognize that despite our best efforts, we may encounter issues that are exceedingly difficult for us to resolve and may introduce a corrosive tone into our relationship. We agree that we will promptly turn to professional mediators, or couple therapists, depending on the nature of the issue, to help us get back on track.

We cannot conceive of circumstances in which these resources would be inadequate to help us resolve our problems. However, if either one of us feels it is necessary to end our marriage, our goal will be to work out a fair and just division of our financial and material assets as amicably as possible. If we come to the end of our marriage, we also agree now, that we will refrain from sharing with others the details of our personal issues, and will strive to forgo all accusations and recrimination. We further agree that we would use mediators along with divorce attorneys to help us dissolve the marriage as amicably as possible.

We are signing our Charter this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_

Susan \_\_\_\_\_ Richard \_\_\_\_\_

NOTE: 1. Margulies, Sam, “The Psychology of Prenuptial Agreements,” J. of Psychiatry and Law (Winter 2003), pp. 415-432.

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Edward J. Kopf, Ph.D., is a co-founder of BMC Associates. For over twenty years he held leadership roles in rapidly growing public and closely-held companies, such as President of American Political Network, Inc., Executive Vice President of US Digital Communications, Inc., Vice President of Circuit City Stores, Inc. and Chief Financial Officer of Ariel Research Corporation. During the last 15 years, he has mediated conflicts within family and partner-owned businesses and consulted with such firms on turn-around, expansion, and sale strategies. Dr. Kopf has taught at Brandeis and Virginia Commonwealth Universities. He has spoken and written widely on collaborative approaches to conflict prevention and resolution.

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