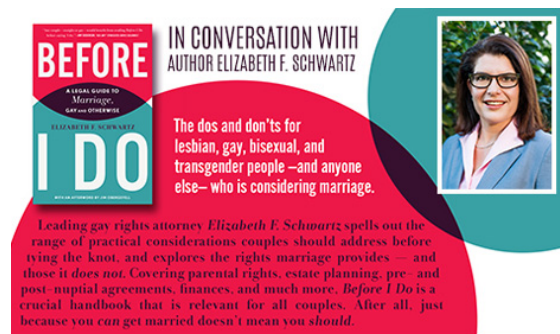




Blog



Before I Do: In Conversation With Author Elizabeth Schwartz

By [K. Guzman](#) · November 12, 2016 · [Post a comment](#)

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The Center on Halsted will be hosting Elizabeth Schwartz on Wednesday the 16th of November at 7pm. Trump is our president, LGBTQ rights are in jeopardy, and many will be planning for their happily ever after with their true love. This is where Elizabeth comes into the picture....

Elizabeth Schwartz has been practicing law since 1997 and is a nationally recognized advocate for the legal rights of the lesbian, gay, bisexual and transgender (LGBT) community. She is the author of the forthcoming book [Before I Do: A Legal Guide to Marriage, Gay and Otherwise](#). While her firm equally works with straight and gay clients in matters of family law, estate planning and probate, she has been at the forefront of providing crucial legal protections for LGBT families.

We asked Elizabeth to share some thoughts on 3 topics covered in her new book and she graciously responded.

Elizabeth: Most of us think that marriage provides nothing but protections for couples and families, but it might also jeopardize protections already in place. If you are receiving any benefits which are determined by your assets and/or income, look into what impact getting married will have on the receipt of those benefits. Also, many have gone to pains to draft up wills and trusts and to designate beneficiaries on their accounts. If you have charitable organizations, other family members or loved ones that you want to be sure benefit from your lifetime of effort, those plans become compromised when you get married as your spouse has certain automatic rights.

Elizabeth: Prenuptial and postnuptial agreements are important for anyone who wants to modify the default in the law. And the default is that you pretty much have to split what you've accumulated during a marriage at the end of it.

Other red flags for a prenup:

Folks with children from a prior relationship they want to protect and those with family wealth or a business that they don't want to divvy up.

If you've got a retirement account you're trying to keep intact, you might want a spouse to waive her rights to it.

If you've been through a bad breakup, whether your own or someone close to you, you are especially aware of the benefit of minimizing the potential fall-out from a divorce and memorializing whatever you can agree to in advance.

The other thing to remember is that prenups are not one-size-fits-all. So yes, while many nuptial agreements are of the "what's mine is mine and what's yours is yours/no alimony to no one" variety, for some couples that's not fair. For example, if you and your spouse agreed she would quit her job and manage the home, she would likely need and deserve some sort of financial settlement upon divorce and that might not be awarded to her in a divorce if the marriage is technically a short-term one. An agreement can provide for greater benefits than the law would otherwise confer.

Elizabeth: The effect of marriage on parental rights to a non-biological child is important to cover. The *marital presumption* refers to the rule that a child born into a marriage is the legal child of the married couple. There have been a few cases saying that didn't apply to a lesbian couple, even when both were listed on their child's birth certificate. A birth certificate is evidence of parental rights but it is not conclusive proof. It's possible those parental rights can then be challenged at divorce or death of the biological parent or by an entity like social security. So we strongly recommend that even married couples obtain a court order such as a confirmatory adoption, which is usually a stepparent adoption, to firm up parental rights. And no, marrying someone who has a child doesn't magically grant you parental rights. You need an adoption to give you legal parental rights in that circumstance as well.

[Check out the link to this very timely event – the first 30 to RSVP will get a FREE copy of Elizabeth's new book. Hope to see many of you at COH on November 16, 2016.](#)

About [K. Guzman](#)

Kathy grew up all over the US - lots of east coast time. She is a surfer girl with an unabridged curiosity. A woman whose mid life awakening continues to bring her to the place she was meant to be. Her degree in Journalism/Creative Writing from the University of Central Florida is being yanked from the archives and put to good use. Her two kids are grown and rock stars in this wild world – her Harley is ready for some serious summer miles – and her heart remains open to life, women and the possibilities each day brings.

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