

# Considering a Prenuptial Agreement?

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If you are planning to get married, you may have considered the prospect of a prenuptial agreement, which is sometimes referred to as a “prenup,” an “antenuptial agreement,” or a “premarital agreement.” In the context of civil unions, these agreements are called “pre-civil union agreements.” (Hereinafter “agreement” or “agreements.”) By definition, these agreements are written contracts between prospective spouses or partners that are entered into prior to marriage or the civil union. These agreements are governed by New Jersey statute.

To be valid, the parties must voluntarily enter into the agreement. Further, the earnings, property, and financial obligations of each party must be fully and fairly disclosed to the other prior to entering into the agreement. This disclosure requirement may be waived in writing. Additionally, unless they expressly and voluntarily waive their right to do so, each party must consult with independent legal counsel before entering into the agreement. Lastly, the agreement must not be considered unconscionable, or unfair on its face, at the time of enforcement.

In appropriate circumstances, an agreement can be an invaluable tool for identifying and classifying each party’s property. Many people may avoid raising the subject of such agreements with the other party because he or she may fear that asking for an agreement will kill the romance or worse yet, reflect a lack of trust or commitment to the relationship. However, it is both reasonable and responsible for a couple to consider the practicalities of an agreement. An agreement defines the property of each party as either joint or separate property. Thus, it is clear from the beginning how each party’s assets would be treated in the event the relationship ends. An agreement can therefore reduce the conflict that may result when assets are not specifically discussed and identified prior to the marriage or civil union. Even if a couple chooses not to enter into an agreement, they may benefit from having the opportunity to discuss their personal and financial expectations with the other.

Although an agreement should be considered in a number of situations, it is especially relevant if a prospective party:

- Has children from a previous relationship or marriage;
- Owns a business or professional practice;
- Has acquired significant assets prior to the marriage or civil union;
- Has significant wealth;
- Is a beneficiary of a trust or anticipates receiving a significant inheritance;
- Is embarking on a second or subsequent marriage or civil union; and/or
- Has significant debts prior to the marriage or civil union.

Under New Jersey law, an agreement can provide for any matter so long as it is not in violation of public policy. Some examples of issues commonly addressed in agreements include:

- A party's rights and obligations in property such as stocks, retirement accounts and real estate that are acquired by the other before or during the marriage or civil union;
- The division of property upon dissolution or separation;
- The disposition of property upon death;
- The ownership rights in, and the disposition of, the death benefit from a life insurance policy;
- Alimony obligations;
- Financial responsibilities during the marriage or civil union;
- The responsibility for debts acquired before or during the marriage or civil union;
- The assignment of which state's law will govern the agreement; and/or
- How disputes about the agreement are to be resolved (e.g. mediation, arbitration).

Since every individual has his or her own unique personal and financial circumstances, prenuptial and pre-civil union agreements may make smart financial and practical sense for a couple. You may need the assistance of an experienced attorney to help you evaluate whether a agreement makes sense for you. A Riker Danzig family attorney can provide you with the information you need to make an informed decision in addition to helping you craft an agreement that will protect your financial and personal needs.

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