

# ***PRENUPTIAL AGREEMENTS***

## **1. What is a prenuptial agreement?**

A prenuptial agreement (prenup) is a contract made by a couple, before they marry, setting out the terms of possession of assets should the marriage fail. Some individuals may have special circumstances where a customized prenup might be beneficial.

## **2. Should I get a prenup?**

Certain life factors may make obtaining a prenup more appealing. If any of the factors listed below apply to you, then you may want to consider a prenup:

- You have significant wealth that greatly exceeds that of your soon-to-be-spouse;
- Your soon-to-be spouse has significant debt;
- You are getting married for the second time (especially if you have children from a previous marriage);
- You own your own business; OR
- You have special family heirlooms that you want to keep in the family;

## **3. What are some advantages of a prenuptial agreement?**

- **Property:** A prenup can establish your own rules for property division and avoid future disagreements. Any kind of property, such as a home, vehicle, stocks, checking accounts, business ownerships, and personal property, can be included in the agreement. A prenup can address what assets remain the separate assets of each spouse and what happens to the appreciation in value of the separate assets. This can prevent a court from giving your spouse a portion of your pre-marriage property during or after the marriage.
- **Debt:** Absent a prenup, creditors may be able to come after you for your spouse's debts. A prenup can protect you against creditors from being held responsible for debts (i.e. student loans, credit cards payments, car notes) that your spouse brings into the marriage or incurs him/herself during the marriage.

## **4. What are some disadvantages of a prenuptial agreement?**

- **Exit Strategy:** Your spouse may view the prenup as evidence that you are not willing to fight for your marriage if problems arise. You may be more inclined to get a divorce, rather than work through marital problems, if the terms of the divorce have already been determined in a prenup.
- **Emotional Damage:** Creating a prenup may send a message to your soon-to-be-spouse that there is a real possibility that your marriage will fail. You are, in effect, planning for divorce before your wedding. This could seriously damage your relationship. Think carefully about this option and have a mature conversation with your soon-to-be-spouse if you are considering a prenup.

## **5. What issues can be addressed in a prenuptial agreement?**

The topics listed below highlight some of issues that can be addressed in a prenup.

This is not a complete list.

- How will property be divided upon divorce;
- Who will own the marital residence;
- Who will be responsible for premarital debts;
- Who will be financially responsible for certain obligations during the marriage;
- Which state laws will govern the prenup (otherwise it will be the state of the divorce, and not the marriage);
- Who will pay alimony/ spousal support, and the amount that will be paid (in most states);
- How will disputes about the prenup be resolved (i.e. mediation or arbitration); and
- Will the prenup expire (i.e. sunset clause).

## **6. What cannot be included in a prenuptial agreement?**

Below is a list of provisions that most states will not uphold in prenuptial agreements:

- Provisions detailing anything illegal;
- Unconscionable or grossly unfair provisions;
- Provisions concerning child custody and child support;
- Provisions encouraging divorce;
- Frivolous personal demands in a prenup (i.e. requiring a spouse to clean the bathroom and take out the garbage three times a week); and
- Provisions dealing with sex schedules; (You cannot force anyone, not even your spouse, to have sex just because you put it in a contract. Such a provision will not be enforceable).

## **7. When is the best time to discuss a prenuptial agreement with my fiancé or fiancée?**

It is recommended that you have a mature discussion with your soon-to-be spouse as early on in the relationship as possible. Waiting a few days, or even a few months before the wedding to introduce a prenup to your wife or husband-to-be can lead to serious problems. Not only could waiting last minute to discuss a prenup ruin wedding plans; a judge may be more likely to invalidate a “last minute” prenup if it appears to have been signed under duress or coercion.

## **8. What steps can I take to ensure that my prenuptial agreement will be valid?**

If you are considering getting a prenup, it is recommended that you hire an attorney. The attorney can ensure that the prenup is written well, fair, and legally binding.

You can also take certain precautions to ensure that the provisions of a prenup agreement will be upheld as valid. Be honest with your spouse. Be sure to fully disclose your assets. Do not wait last minute to ask your soon-to-be-spouse to sign a prenup. If a judge finds that your spouse was coerced into signing a prenup or forced to sign a prenup under duress two days before the wedding, the prenup will not be upheld as valid.