

Prenuptial Agreements Protect Pre-Marital Assets

Q.: My fiancé and I plan to get married in a few months. Can we put together an agreement before the wedding that will protect the money and property each of us will bring into the marriage?

A.: Yes. Agreements of this nature are called “prenuptial agreements.” In addition to protecting your separate pre-marital assets, a prenuptial agreement outlines what the terms will be your marriage should end in divorce or dissolution.

Q.: What are the advantages and disadvantages of having a prenuptial agreement?

A.: The agreement will provide specific terms that will govern the relationship as well as a possible future breakup. If only one of the parties favors creating a prenuptial agreement, or if parties disagree about what the terms should be, discussions about the terms of a prenuptial agreement may cause conflict before a marriage. However, such discussions may bring to light issues that likely would surface later, and having an agreement in place may help prevent future disagreements about each party’s rights and duties.

Q.: How far in advance of our wedding should we sign a prenuptial agreement?

A.: The greater the time between the signing of the contract and the wedding date, the stronger the agreement. It is wise not to present an agreement for signature on the eve of the wedding, when your attention will be focused elsewhere and you have little time to thoroughly consider the agreement.

Q.: Can the same attorney represent both of us?

A.: No. An attorney is required by ethical guidelines to represent only one of you. Also, each of you should have individual counsel so that your interests will be equally protected.

Q.: What type of information must we disclose to each other in order to make the agreement enforceable?

A.: In order for a prenuptial agreement to be enforceable, each of you must fully and accurately disclose your pre-marital assets and liabilities. It is wise to provide each other with a copy of your income tax returns and a balance sheet very early in the process. These documents also should be attached to the agreement as exhibits.

Q.: How are prenuptial agreements enforced?

A.: The domestic relations division of a common pleas court generally enforces such agreements. In the event of a divorce or dissolution of marriage, either party may ask the court to enforce the agreement as part of the divorce or dissolution filing. However, the court will enforce a prenuptial agreement only in the context of a divorce or dissolution. If there are provisions of a prenuptial agreement that have to do with matters other than a marital breakup, it might be wise to include within the prenuptial agreement itself a procedure for resolving any conflicts over these matters (through mediation or arbitration, for example).

Q.: What type of agreements will most likely not be enforced?

A.: Courts are not likely to enforce agreements where there is not a full and accurate disclosure, where there is fraud, misrepresentation, undue influence, duress, fraud and/or terms of the agreement are either contrary to law or against public policy. In addition, agreements that are presented on the eve of the marriage are likely not to be enforced.

Q.: May we include terms about how our marital assets and liabilities might be divided if the marriage doesn't last, and about spousal support, child custody and support?

A.: Yes. There is no limitation on what you may include in your agreement. However, not all terms may be enforceable. It is a good idea to include a "severance clause," a statement saying that, even if one or more provisions are determined to be unenforceable, the remainder of the terms should be found to be enforceable.

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Law You Can Use is a weekly consumer legal information column provided as a

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Top of Page
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