





# **Pre-nups, Divorce and Asset Protection**

## **What is a Pre-nuptial agreement?**

In the simplest of terms, a premarital agreement is a written contract created by two people intending to be married. The agreement normally lists all of the property; savings and investments each person owns, as well as their debts, and it specifies what each person's property rights will be after they marry. Both spouses must normally have their own attorneys review the agreement, all (and I mean ALL) assets must have been fully disclosed and separate property must often be segregated.

Many people think this is a good strategy to protect their assets in the event their marriage doesn't succeed. These types of agreements typically explain how property will be divided and if spousal support, also known as alimony, will be paid in the event of a divorce. Each individual may also set up their intentions about distributing property after one of them dies. This is particularly an issue for second marriages when one or both spouses want to preserve property for their bloodline children or grandchildren from a former marriage.

Depending on the state where you reside, a premarital agreement may be called a "prenuptial agreement" or simply a "pre-nup." There is also the term "ante nuptial agreement," which is basically the same, except it is done after a couple has been married.

## **Are Premarital Agreements Really Effective?**

At present, every state allows them. However, a pre-nup that is judged unfair (that seems to encourage divorce) or else fails to meet state requirements will often be rejected.

You should also know that courts are not likely to enforce agreements of a non-monetary nature. For example, you can agree on how you will divide your property if you divorce, but you can't normally sue your spouse for failure to do visit you in the nursing home, even if your premarital agreement says that he/she must do so every Wednesday night.

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Whether you create a premarital agreement depends on your circumstances and on both of you as individuals. Most premarital agreements are made by couples that want to get around the mandates of state law in the event of a divorce or at death.

Frequently this happens when one partner has property that he or she wishes to keep if the marriage ends -- for example, a significant income, or a family business. Individuals who have children or grandchildren from prior marriages make up the majority of most premarital agreements.

### **The Difficult Part of Pre-nups (or why most people don't like to ask for them)**

Pre-nuptial agreements are often good ideas. They often work; but, sometimes they don't work (just ask Donald Trump). One thing, and the only thing, you can count on from a solid pre-nuptial agreement is the guaranteed destruction of trust. To ask for a Pre-nup is to admit that you don't trust your prospective spouse. This is often a wise move; however, this sure destroys the illusion of complete trust and respect most couples like to take to the altar.

To get a pre-nup in place the wealthier prospective spouse will normally say: "Honey, I have built up some serious wealth and thought it would be great to keep it separate property." What the other spouse hears is "Gosh I love you, but just in case you turn out to be a loser, would you sign this so I can keep my stuff?" The "poor" spouse now knows for sure that he or she is not trusted. Simply stated: Prenups do not promote great marital relationships. In many cases, even the act of proposing one puts serious impediments to personal trust.

### **A much better solution is an asset protection plan**

An asset protection plan which incorporates a state of the art asset protection trust can be drafted to keep the assets of the wealthier spouse separate property provided some simple rules are followed. In addition, the duress and other clauses found in solid asset protection trusts do help if divorce materializes (even if a pre-nup is also done).

Note further that an asset protection plan which is designed to maintain the wealthier spouses assets as separate can also name the "poorer" spouse as a beneficiary. This makes for warm and trusting marital relationships.

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In short, an asset protection plan is a very valid alternative to a traditional prenuptial agreement. Why destroy trust when you do not need to.

Please call for a consultation

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