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THIS WAY FORWARD

YOUR WEALTH



Assets and Prenuptial Agreements

>>> Prenups can start marriages on strong footings based on understanding.

By Sharon L. Klein and Madeline Marzano-Lesnevich

Prenuptial agreements (“prenups”) might have negative connotations, but they can help eliminate the financial uncertainty associated with setting up a household together. The wealthier spouse may feel confident that his/her assets are secure, while the less wealthy spouse may be relieved to receive some financial support regardless of the marriage’s success.

Legal Aspects While individual states’ prenuptial laws differ, they usually follow the same general form. An agreement is signed

by both parties and witnessed by a notary. It is highly recommended that each spouse obtain counsel to ensure his/her interests are protected, and the agreement follows state law.

Both spouses generally prepare detailed financial statements, including assets and liabilities, annual gross income, family trusts, and potential inheritances. Full disclosure ensures each spouse understands what he/she is getting and giving up, and failure to do so can result in the agreement being set aside.

In the absence of a prenup, upon divorce, community property states will generally divide the couple’s assets acquired during marriage in half, while states like New Jersey may make subjective assignments of ownership of assets based on years of marriage, children, lifestyle and other factors.

A prenup also allows parties to agree to bequeath specific assets to particular individuals under their estate planning documents, like children from a prior marriage.

> Lack of planning could have disastrous consequences.

Business Owners Business owners typically want to ensure that a family business stays within the family. Accordingly, it’s important to memorialize business ownership/succession rights in a prenup, and to have a buy/sell agreement that dovetails with that prenup. Lack of planning could have disastrous consequences.

Financial Arrangements/Child Custody

Prenups may include financial arrangements. For example, “maintenance” constitutes the amount of alimony one spouse may receive.

No state will automatically adhere to an agreement concerning custody, parenting time/visitation, or child support. These matters are revisited during divorce proceedings.

Key Points to Remember

- Couples should sign prenups at least 3-6 months before the wedding to avoid claims of duress.
- Each party should retain independent counsel.
- It is better to provide more financial disclosure to avoid a spouse later claiming, “If I had known how much was involved I would never have agreed to...”
- Once married, the couple should put the prenup away. Many agree in a moment of bliss to amend the agreement, only to regret that later.
- The prenup, correspondence between counsel evidencing the negotiations, including draft versions of the agreement, should all be kept in a safe place. **NJB**

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