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## PRENUPTIAL AGREEMENTS

Prenuptial agreements are designed to address the financial rights and obligations of parties entering into a marriage rather than relying upon applicable state law in the event of death or divorce for determination of the parties' rights. Spousal inheritance rights and divorce law can vary widely among states—the laws of the state where the marriage began may be very different than the laws of the state in which it ends. A prenuptial agreement should provide clarity of financial rights and obligations in the event of death or divorce regardless of applicable state law.

### GOALS.

- Protection of assets owned prior to the marriage;
- Protection of inherited assets, gifts and trust distributions received during the marriage; and
- Protection of assets for eventual inheritance by children from a prior marriage or relationship.

The goals of a prenuptial agreement entered into by parties prior to a first marriage can be very different from the goals of a prenuptial agreement prepared for parties prior to a second marriage.

**REQUIREMENTS.** A prenuptial agreement is a contract. It is required to be in writing, signed and acknowledged by the parties. While the requirements for valid prenuptial agreements vary by state, prenuptial agreements should include full disclosure of financial assets and obligations, and be fair at the time signed and not unconscionable when the agreement is to be enforced. Further, although separate legal representation of each party may not be required, it is standard practice.

CONTINUED

## PRENUPTIAL AGREEMENTS

### FOUR COMPONENTS OF A PRENUPTIAL AGREEMENT.

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#### SEPARATE PROPERTY

Typically will include property the parties come into the marriage with and property received during the marriage by inheritance, gift and/or from a trust during the marriage.

#### MARITAL PROPERTY

Property acquired by the parties during the marriage that is not defined as separate property, including property held by the parties jointly and employment earnings/compensation received by the parties during the marriage.

#### INHERITANCE RIGHTS

The agreement will address statutory spousal rights in the event one of the parties dies during the marriage. Typically, the parties will waive rights to inherit the other party's separate property. Specific provisions may be included to provide for the less-monied spouse in the event of death of the other party.

#### DIVORCE

The agreement will address division of marital property and property which is a mix of separate property and marital property. The agreement should also address the issue of alimony.

Typically, separate property will not be subject to division and marital property will be divided between the parties equally. Agreements should also provide for division of commingled property—property which is a combination of separate property and marital property. The parties may waive alimony entirely or may decide to limit the scope of alimony. The agreement typically does not address child support or child custody issues as they are subject to judicial determination / review.

**TIMING.** Prenuptial agreements are tailored to the specific needs and circumstances of the client and can be very heavily negotiated. Accordingly, it is essential to discuss preparation and negotiation of a prenuptial agreement well in advance of a wedding. We recommend beginning the process at least six months in advance of the wedding date.

*This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.*