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Prenuptial Agreements *(Having the Funeral Before the Wedding)*

Just when you thought you would never need to see another divorce lawyer, the love bug bites again, and it looks like another marriage is in the offing. After already parting with too much time, money, and energy in the last bout, it is now time to think about how to avoid another knockout punch.

More and more people are divorcing and remarrying. Prenuptial Agreements, once the protective coloring of the rich and famous, are now commonplace. With the rise of the double income family, more people have money and assets to protect.

In Pennsylvania, a prenuptial agreement does not have to be similar in length or depth to a computer manual. Although the reasons may vary, such an agreement gives you control over how your assets will be divided if you divorce or die during the marriage.

Pennsylvania's law is that all property owned or acquired by either spouse from the date of marriage to the date of separation is marital and divisible in a divorce. This includes any increase in the value of property owned prior to marriage, any increase in the value of gifts received from third parties during the marriage, and any increase in inheritances received during the marriage. The measurement of marital property is from the date of marriage or the date of receipt of the gift or inheritance to the date of separation or the date of trial (whichever is lower). For example, if one spouse owned an automotive business that was worth \$100,000 at the time of the marriage; \$250,000 at the time of the separation; and, \$300,000 at the time of trial, the marital and divisible portion would be an increase of \$150,000. The same rationale would apply to bank accounts, securities, homes, etc. As another example, if a spouse received \$100,000 in stocks from a parent's estate during the marriage, and the value of those stocks increases by \$50,000 from the time of receipt to the time of the separation, and drop to \$30,000 at the time of trial, then \$30,000 is the marital and divisible proportion. You can protect these assets by having a well-prepared agreement.

A Prenuptial Agreement can also protect you from other claims which are available to a financially disadvantaged spouse, including temporary alimony or spousal support, equitable distribution of the marital assets, counsel fees, and other economic remedies in the event of a separation or divorce. These claims may also be eliminated or modified by a Prenuptial Agreement.

It is equally important to have a prenuptial agreement so that you can control how your estate is to be divided in the event of your death during the marriage. Without a prenuptial agreement, your new spouse would be entitled to claim a portion of your estate, regardless of whether you signed a Will which leaves her less than that portion. A well-crafted agreement can avoid such a possibility and allow both spouses to draft a Will in any manner he or she wishes to, without the threat of a later Will contest.

Because all of us are living longer, another major issue to consider in prenuptial agreements is one spouse's rights and obligations to take care of or be taken care of by the other spouse in case of a serious illness.

At the present time, Pennsylvania upholds prenuptial agreements as long as both parties provide disclosure of their assets. It doesn't matter whether the Agreement is considered fair or unfair. This may seem logical, but other states, will not enforce an agreement unless it is considered to be fair at the time of the enforcement. What this means is that Pennsylvania gives to parties the right to draft a prenuptial agreement in whatever manner they wish to, provided they are aware of each other's assets at the time the agreement was signed. Unlike some states, Pennsylvania courts will not overturn a prenuptial agreement just because it is no longer considered to be fair to one or both spouses at the time of enforcement.

One of the main difficulties with prenuptial agreements is having to negotiate unpleasant matters such as death and divorce before the marriage. Sometimes one fiancé's position on an issue will anger, disappoint, or totally shock the other. It is important to resolve these as well as other issues. For example, what happens if one spouse contributes more money than the other toward a new marital residence and there is later a divorce: How are the proceeds divided? What happens if one spouse lives in the house of the other and the owner spouse dies? It is far better to discuss these issues before marriage and come to an understanding rather than call off the wedding at the last minute or, worse yet, wait until after the wedding. My experience has been that most couples get through the negotiation process unscathed and sometimes make their own "deal" before or during the negotiation process.

Some pitfalls can be avoided by following a few simple "don't's":

1. **Don't** spring the "prenup" on the fiancé a week before the wedding. He or she may sign it but greatly resent it later.

2. **Don't** present a “walk the plank” agreement which gives your fiancé nothing while at the same time vowing eternal love and fidelity. This not conducive to anything but future unhappiness.
3. **Don't** avoid discussing your assets. This is not a time to be coy about telling your prospective spouse about what you do or don't own. A lack of candor as to your assets can be disastrous in a prenuptial setting.
4. **Don't** be without counsel. This is not the time to be without legal representation. Pay to take care of your assets now as that they can take care of you later.

A prenuptial agreement, like any other legal matter, should be handled by an attorney well-versed in the field. Don't be afraid to ask your prospective attorney how much experience he or she has in family law and in drafting one of the most important documents of your life.

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