

# PRENUPTIAL AGREEMENTS



Prenuptial agreements are primarily used to determine, in advance, the property rights of the parties during the marriage, at the time of dissolution of the parties' marriage, or upon the death of one of the parties.

The agreement covers such topics as marital property (acquired during the marriage) and non-marital property (owned by a party prior to the marriage), maintenance (alimony), retirement benefits, and estate planning. It also clarifies that neither party is responsible for the liabilities of the other or has any claim to the income of the other.

The agreement will state the goals of both parties in drafting the agreement and will recite the general consideration for the agreement, which is the marriage itself. It will also recite the consideration for waving one party's rights to inherit or receive marital property. The agreement may include a provision stating what the parties' will may or may not specify. If executed in accordance with the requirements set forth above, the agreement will be binding on the parties' heirs and assigns.



The agreements we prepare typically contain a provision that the agreement will be interpreted in accordance with Minnesota law. The agreement can also contain a clause which states that the agreement will be submitted to arbitration if there is a subsequent dispute over its terms.

The completed agreement is often signed separately by each party. This is done to maintain the integrity, fairness and formality of the agreement. If the parties have a substantial amount of property, arrangements could be made to have a court reporter present when the agreement is signed to record everything that is said and done by all of the parties. Past experience has shown that a detailed record is necessary to resolve future disputes.

The standard forms of agreement usually contain the following terms. Should the marriage of the parties be dissolved, under most agreements both parties will be released from all obligations to the other, and each party will have waived their right to receive maintenance from the other. There would be no property distribution involved in the dissolution because each party will retain his or her property free of any right or claim of the other, except for any assets acquired during the marriage. There would be no right for either party to make a hardship claim under the Minnesota dissolution statute against the other for part of their non-marital property.

Upon the death of one of the parties, the surviving party would have no right to inherit from the deceased party's estate. In addition, the surviving party would have no right to seek financial maintenance or to select assets from the estate of the deceased party.

Either in addition to or in place of standard terms, additional options are available to parties. The agreement could provide that the parties obtain life insurance on themselves, with the death benefits payable to the other party. Agreements can also be prepared using a graduated scale by which, after the passing of certain stipulated time periods, the parties gradually gain an interest in the holdings of the other. The agreements can also provide for an automatic termination after a certain time period.

We suggest that new wills for both of the parties be made in conformity with the prenuptial agreement simultaneous with its execution or preferably a short time thereafter.

Our experience is that it is frankly often difficult to combine issues of love and money, and considerable patience and diplomacy are required on the part of attorneys and parties to reach a final draft satisfactory to both parties. We have considerable experience in preparing and negotiating prenuptial agreements. Accomplishing that result is best achieved if the parties get started well in advance of their wedding date and not attempt to accomplish reaching an agreement under pressure of a time deadline.

This article is intended to give you a brief summary of the concept of prenuptial agreements. Because each and every couple has varying assets, estate planning needs, and objectives, it will be necessary for us to meet with you to discuss your needs in detail.

One final consideration is to be aware of the limits of the prenuptial agreement. We can warrant that a prenuptial agreement, if executed properly, will be enforceable according to its terms in the state in which it is made, as of the time it is entered into. However, it may be presented for interpretation years later, possibly in an other state, and subject to the changes in the law that have occurred in the interim.

Minn. Stat. §519.11 governs prenuptial agreements in Minnesota. To ensure the substantive fairness of the agreement, the statute requires, among other things, the following:

- The parties to a prenuptial agreement must be of legal age;
- The agreement must make a full and fair disclosure of both parties' earnings and property, usually in the form of exhibits attached to the agreement; and
- Both parties must have an opportunity to consult with legal counsel of their own choice.

To guaranty the formality and recordability of the agreement, the statute further requires that:

- The agreement must be in writing, must be signed in the presence of two witnesses, and must be acknowledged (notarized); and
- The agreement must be executed prior to the date of the solemnization of the marriage; the agreement does not go into effect until the solemnization of the marriage.