

Legal Briefs

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Premarital Agreements

Many couples are taking steps to clarify their money matters before tying the knot.

Sometimes one (or both) partners who want to get married also want to avoid the risk of losing assets, income, or a family business in the event of a divorce. Others, who may be marrying for a second or third time, might wish to make sure that most of their assets or personal belongings will be passed on to the children or grand-children of their prior marriages rather than to their new spouse.

The law has developed a legal instrument to address these concerns—the premarital agreement—also known as a prenuptial or antenuptial agreement. Premarital agreements are for anyone who would like to avoid uncertainties about how a divorce court might divide their property or decide spousal support if their new marriage fails.

In signing a premarital agreement, a spouse agrees to have his or her property rights and support obligations determined by the agreement rather than by the usual rules of law that a court otherwise would apply upon a divorce or death.

If the husband and wife have signed a valid premarital agreement, that agreement will supercede the usual laws for dividing property and income upon divorce or death. In many cases, the less wealthy spouse will receive less under the premarital agreement than he or she would receive under the usual laws of divorce or wills.



In general, the premarital agreement must be in writing and signed by the parties. In most states, the parties must fully and clearly disclose in writing their income and assets to each other. This way the parties will know more about what they might be giving up.

Of course, the premarital agreement must not be the result of fraud or duress. An agreement is likely to be invalid on the basis of fraud if one person (particularly the wealthier one) deliberately misstates his or her financial condition. Similarly, if one person exerts excessive emotional pressure on the other to sign the agreement, a court might declare the agreement to be invalid because of duress.

A lawyer can help you make sure that the agreement is drafted properly and that both parties are making informed decisions.