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What is typically covered in a Prenuptial/Intermarital Agreement?

1. Name and address of prospective wife.
2. Name and address of prospective husband.
3. Parties' capacity to contract.
4. Description of property owned by each party.
 - a. Real property.
 - b. Personal property.
5. Approximate value of property.
6. Statement of full disclosure of all assets and liabilities of each party.
7. Consideration.
8. Description of property to be transferred, if any.
 - a. Kind.
 - b. Value.
9. Definition of ownership of after-acquired property.
10. Designation of property to be considered separate and property to be considered commonly or jointly owned.
11. Provisions concerning children, both of the marriage contemplated and those of prior marriages.
 - a. In event of death of one spouse, payment for support, maintenance and education of children.
 - b. Provision for home and support for children.
12. Release of marital property rights.
13. Effect of termination of marriage, other than by death.
14. Statement of whether property transferred under agreement is to be in satisfaction of all claims against estate of transferor.

15. Provisions in event of death of one party during marriage.
 - a. Payment from decedent's estate for survivor's support and maintenance.
 - b. Payment from decedent's estate for the maintenance, support and education of children and stepchildren.
 - c. Transfer of property.
 - d. Effect on terms of agreement.
16. Provisions relating to life insurance.
 - a. Change of beneficiary on existing policies.
 - b. Acquisition of new policies with spouse as beneficiary.
17. Provision for cooperation in carrying out intent of agreement.
18. Provision for the making of a will or devise or provision not to revoke a will or devise.
19. Agreement's effective date.
20. Revocation, termination or modification provisions.
21. Statement of independent representation by independent legal counsel for each party or voluntary and express waiver of opportunity to consult with counsel.
22. Date of agreement.
23. Signatures.
24. Acknowledgments, if applicable.
25. Name and address of preparer of instrument, if title of real property is affected by the instrument and the instrument is to be recorded.
26. Prior marital history, and family circumstances.
27. What property and prospects each spouse is bringing into the marriage.
28. Who will own the investment earnings from such property.
29. What will happen with the earnings of each spouse.
30. What happens with property one spouse may inherit.
31. Where the couple will reside.
32. How taxes will be handled (e.g. joint or separate returns).

33. The level of support in the event of a divorce.
34. What happens to debts owed before the marriage and those thereafter incurred.
35. Where one or the other party is marrying for a second or third time, commonly provisions will be found bequeathing certain assets to a child of a previous marriage rather than to the new spouse.

What You Can (and Can't) Do With a Prenuptial Agreement

If you're trying to decide whether or not to make a prenuptial agreement, you'll need to understand what this type of contract can -- and can't -- do for you.

What You Can Do With a Prenup

Prenuptial agreements are most often used for the following purposes:

Keep finances separate. Every state has laws designating certain kinds of assets accumulated during marriage as marital property or community property, even if these assets are held in the name of just one spouse. If a couple divorces, or when one spouse dies, the marital or community property will be divided between them, either by agreement or by a court. If you want to avoid having some or all of your individual accumulations during marriage divided up by a court, you can do so with a premarital agreement.

Protect each other from debts. Some of us bring debts, as well as assets, to a marriage. If there's no prenup, creditors can sometimes turn to marital or community property to satisfy the debts of just one spouse. But if you want to make sure that saying "I do" does not mean saying "I owe," you can use a prenup to limit your liability for each other's debts.

Provide for children from prior marriages. A prenup is helpful (perhaps essential) if either of you has children from another relationship and you want to make sure that your children inherit their share of your property. In a prenup, one or both spouses can give up the right to claim a share of the other's property at death, perhaps in exchange for an agreed upon amount of property.

When I get married, will my wife gain ownership rights to my house?

Keep property in the family. If your property includes something you want to keep in your birth family, whether it be an heirloom or a share in a family business, you and your spouse can agree that it will remain in your family, and you can specify that item in your prenup. This can even include property that you expect to receive in a future inheritance.

Follow through by making your estate plan. In addition to using your prenup to waive inheritance rights and state your intentions for passing on your property at death, it's vital that you prepare the

estate planning documents -- a will, living trust, and so on -- that actually transfer your property as you intend.

Define who gets what if you divorce. Without a prenup, state law will specify how your property will be divided if you ever divorce. These laws may dictate a result that neither of you wants. You can use a prenup to establish your own rules for property division and avoid potential disagreements in the event of a divorce. In most states, you can also make agreements about whether or not one or both of you will be entitled to alimony. Some states forbid or restrict agreements about alimony, however.

Clarify responsibilities during the marriage. In addition to the reasons listed so far, there are countless other uses for a prenup, depending on your circumstances. Here are some examples of other matters people include in their prenups:

- whether to file joint or separate income tax returns or to allocate income and tax deductions on separate tax returns
- who will pay the household bills -- and how
- whether to have joint bank accounts and, if so, how you will manage them
- agreements about specific purchases or projects, such as buying a house together or starting up a business
- how you will handle credit card charges -- for instance, whether you will use different cards for different types of purchases, what kinds of records you will keep, and how you will make payments
- agreements to set aside money for savings
- agreements for putting each other through college or professional school
- whether you will provide for a surviving spouse -- for example, in your estate plan or with life insurance coverage, and
- how to settle any future disagreements -- for example, you might agree to hire either a mediator or a private arbitrator.

What You Can't Do With a Prenup

There are some things you just can't -- or shouldn't -- do with a prenup. State laws differ as to what matters are considered off-limits. However, as a general rule, any agreement to do something that is illegal or against state-defined public policy will be considered unenforceable -- and may even jeopardize other valid aspects of the premarital agreement. Here are some things that you can't do, at least in some states:

Restrict child support, custody, or visitation rights. No state will honor agreements limiting or giving up future child support. The same holds true of agreements limiting future custody and visitation rights. This is because state lawmakers consider the welfare of children to be a matter of public policy and do not enforce any private agreements that would impair a child's right to be supported or to have a relationship with a parent in the future.

Give up the right to alimony, in a few states. A handful of states similarly limit your ability to give up your right to alimony -- also called spousal support or separate maintenance -- if there is a

divorce. Other states permit such waivers, so you will need to know what your state laws say if you are considering this kind of agreement.

"Encourage" divorce. At one time, many courts viewed any prenup specifying how things would be divided up in case the couple splits as void and unenforceable because it promoted divorce. The modern approach allows such agreements, but judges in some states still take a hard look at them. If the agreement appears to offer a financial incentive for divorce to one party, it may be set aside.

Make rules about nonfinancial matters. For practical reasons, you should keep personal agreements out of your prenup. Here is a partial list of nonfinancial matters that sometimes find their way into prenups, but are better dealt with separately. Of course, the possible issues are endless and you may well think of many that aren't mentioned here:

- responsibility for household chores -- from laundry to cleaning to car care
- use of last names after you marry
- agreements about having and raising children, such as birth control, having children, children's names, child care responsibilities, and education
- how you will relate to in-laws or stepchildren, and
- whether you will have any pets and who will be responsible for them.

These kinds of nonmonetary agreements aren't binding in court, and in fact they could cause a judge to take your entire prenup less seriously. Rather than including personal matters in your prenup, you may find it helpful to simply make a list of your most important concerns and discuss them together. If you want to take it a step further, you can underscore your commitment by writing down your personal agreements in a separate document -- perhaps in a letter that each of you writes to the other, clarifying your intentions and wishes.