

# Premarital Agreements

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Years ago, marriage contracts were mainly for the rich and famous. Today, however, premarital agreements are used by couples who are neither rich nor famous to clarify issues of money, property, and prior financial commitments.

Premarital agreements rarely are used by young people who have few assets and are marrying for the first time. They are more commonly used in the following situations:

- The financially independent widow and widower marrying late in life. The primary purpose of the agreement is to give up rights in each other's assets, so that at death, property passes to children of the prior marriages.
- The couple marrying for the first time in their late 30s or early 40s after each has accumulated assets. The purpose of the agreement is to keep property owned prior to the marriage as separate, rather than marital, property.
- When one or both partners has been previously divorced. The purpose of the agreement is, should this marriage end in divorce, to avoid some of the financial complications experienced in the prior divorce.

## The nature of premarital agreements

**Property Issues.** Premarital agreements usually determine how property will be distributed when the marriage terminates either because of death of one spouse or divorce. Property may refer to property either partner is bringing into the marriage and property either partner accumulates during the marriage. Property may be real estate or personal property. Personal property includes tangible property such as vehicles,

jewelry, and furniture; and intangible property such as stocks, bonds, bank accounts, and pensions.

If the premarital agreement is valid, the court will enforce these property agreements when the marriage is terminated. For example, if the agreement specifies that property, and its accumulated value, that the wife inherited from her father is to remain her separate property, the husband would have no right to any of the property at divorce or at the wife's death.

**Personal Issues.** Agreements about personal items, such as church affiliation or who does household tasks, may be in the agreement but are legally unenforceable. For example, if the agreement says each spouse will do one-half of the food shopping, prepare one-half of the meals, and wash one-half of the dishes, a judge will not order either spouse to cook and wash dishes. However, even though not enforceable by the court, discussing personal items and putting them in writing is often useful to the couple, because it gives them the chance to consider the nature of their relationship.

Agreements about the support or custody of children of the marriage, if the marriage ends in divorce, are also unenforceable. These are rights that belong to the child. At divorce, child-support decisions are based on the incomes of both parents. Custody decisions are made on the basis of what is in the best interest of the child.

## The legal requirements for a premarital agreement

The Oregon Uniform Premarital Agreement Act requires that a premarital agreement be in writing and signed by both parties. The agreement becomes effective upon marriage. To be enforce-

able, the agreement must be entered into voluntarily and each partner must have knowledge of the financial assets and obligations of the other.

Since a premarital contract is a legal document, the logical person to draft it is an attorney who practices family or domestic relations law. Before signing the agreement each partner should have the agreement reviewed by his or her own attorney. One attorney should not represent both partners.

## Do your homework before seeing an attorney

Before talking with an attorney, each partner should prepare a financial statement and discuss and agree on major concerns. A premarital agreement may be desirable if either or both partners:

- Owns valuables such as real estate, stocks, bonds, jewelry, furniture, or collectibles that he or she wants to keep as separate property
- Wants to keep the increase in value of separate property earned during the marriage from becoming marital property
- Wants an inheritance received before or during the upcoming marriage to remain as separate property
- Wants to clarify financial obligations to a parent or a child from a previous marriage
- Is in a family business and wants to clarify the rights of the new spouse in that business

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The following items will be helpful in starting discussion:

**Real Estate.** List all real estate owned by either partner, its value, indebtedness, and payments. Who would the owner want to receive this property on his or her death? What would happen to the property at divorce? If a home is sold, will the proceeds remain in the name of the owner or the couple? If a new home is purchased, who will own it?

**Financial Assets.** List all stocks, bonds, money market funds, mutual funds, annuities, checking and savings accounts, and money owed to either partner. What portion, if any, will be merged upon marriage and what will remain as sole ownership in each name? Who will manage these assets? What ought to happen to these assets at death of one spouse or at divorce?

**Furniture and furnishings.** What items will be jointly owned? What items will be separately owned? Will some items be sold or given away before or after the marriage?

**Vehicles.** Will the titles of cars, boats, etc., be kept in separate names or will they be reissued in joint tenancy? Who will pay the insurance? Should insurance on the vehicle be changed?

**Life insurance.** Decide whether the present beneficiary designation needs to be changed. Is the present amount of insurance adequate for the new family?

**Employment.** Will earnings be kept in separate accounts or pooled? Will the marriage have an impact on either party's ability to relocate for employment? Will either discontinue working? What effect will transfer of one party to a different community have on the other party? What effect will an early retirement of one spouse have on the relationship and financial situation?

**Credit cards.** Will they remain in separate names? Or will credit be reapplied for in both names? Will a limit

be set on the amount that one party can charge without consulting the other? Who pays the bills and keeps the records?

**Debts.** List all debts either spouse will owe at the time of the wedding. Who is to pay these debts?

**Former spouse.** If the previous marriage of one spouse ended in divorce, review the divorce decree. What financial obligations, if any, were made to the former spouse—including property settlements, spouse and/or child support payments, life insurance, health insurance, and pensions? Are there benefits from a former spouse that will cease after remarriage?

If one partner is a widow or widower, review any changes remarriage may cause in the financial situation. Are there pension benefits or other income that will cease after the remarriage?

**Parents.** Does either party have aging parents who are dependent now or may become so? Where will parents live? Who will care for them? What financial help will be given?

**Children.** What are each party's financial and/or parental responsibilities? If a child has special needs, what are they and how will they be handled? What financial promises, both oral and written, have been made to your children concerning education, weddings, business ventures, car insurance, support, and so on? Which, if any, of these issues should be discussed with the children?

**Charitable/religious contributions.** Who decides what contributions are made? Will contributions come from husband, wife, or both?

### **Financial practices must be in keeping with the agreement**

If a couple does enter into a premarital agreement, it's important that the daily financial practices are in keeping with the agreement. How property is titled and who pays what expenses is

important. Discuss with the attorney the financial practices necessary to keep the agreement intact. Talk with the attorney about the need for each partner to give the other spouse or someone else a power of attorney to manage financial affairs in the event either should become incompetent.

### **Summary**

A premarital agreement can create an atmosphere of open discussion in a new marriage. This will carry over and future concerns about money, work, children, the home, and any other mutual issues can be discussed openly. Both parties need to be aware of all important facts at the time the agreement is written, and neither partner should sign the agreement unless she or he truly agrees with the terms.

### **For further reading**

*Remarriage: Legal and Financial Issues*, EC 1484, \$2.00

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