

PRENUPTIAL AGREEMENTS ("PRENUPS")

What Are They? Prenups are written agreements signed by parties who intend to get married. Prenups address how assets are to be divided when a marriage ends due to death or divorce. They can protect each spouse's premarital assets from a claim by the other spouse, ensuring that your spouse will share in your premarital assets only as much as you wish. They can also protect income or assets acquired during the marriage by, for example, setting amounts of support or alimony payments to each spouse based on the length of the marriage.

Who Should Consider One? Prenups are most often considered in the following situations: (1) one spouse is expecting a family inheritance or wealth; (2) one spouse is entering into the marriage with significant assets; and/or (3) one or both parties have been married previously.

What Are the Benefits? Prenups provide certainty for both parties and protections that go beyond the law governing the division of assets. Prenups reduce the chance of drawn-out, litigation, and avoid expensive legal fees if the marriage ends.

How Does the Process Work? Both parties to a prenup should be represented by separate counsel. The agreement is typically drafted by one attorney according to discussions with both parties. A copy of the draft agreement is then sent to counsel for the other party, who will advise the other party as to his or her rights. Once the draft is finalized, both parties sign the prenup.

Important Procedural Issues. Florida does not require full financial disclosure before entering into a prenup. Best practice, however, is to provide full financial disclosure of all assets and income. Otherwise, the agreement could be challenged for lack of informed consent. The prenup should also be signed a sufficient time before the wedding to give the other side time to contemplate the terms of the prenup. This should avoid a challenge to the validity of the agreement based on coercion to sign because of time pressure.

If you or a loved one will be getting married and want to discuss prenuptial agreement, please call our office.