Protecting your Home with a Pre-Nuptial Agreement

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By Megan Smith

It is increasingly more common for at least one person in a couple to have purchased his or her home prior to the parties' marriage. Often, such a purchase occurs years in advance of the parties even meeting each other. In cases such as these, a pre-nuptial agreement is necessary to preserve that person's home in the event of a divorce. Assuming the parties move into the pre-marital home of one of them, many issues, including the payment of bills, payment of the mortgage, increase in the value of the home and exclusion of a party in the event of separation or divorce, should all be considerations in a discussion of protecting this asset.

Under the Pennsylvania Divorce Code, passive and active increases in the value of pre-marital assets, such as a pre-maritally owned residence, become part of the marital estate. Passive increases mean increases in value due to the passage of time such that the fair market value of the home has risen through the course of a marriage. Active increases include payments to a mortgage or home improvements. Active and/or passive increases can be discussed and potentially exempted from the marital estate through the use of a pre-marital agreement, thus protecting them from equitable distribution or claims of the other party in the event of a divorce.

Likewise, in the event of a divorce in Pennsylvania, a pre-nuptial agreement can define a date certain by which a party must vacate a residence, thereby providing the other exclusive possession. Without such a provision or current agreement otherwise, parties are left to make an application for such relief from the Court, and there is no guarantee such a request will be granted during the pendency of the divorce process, which often may take more than a year.

Bill payment and maintenance of the household is another issue that can be addressed by a pre-nuptial agreement (and if the parties are not contemplating marriage in the near future, a cohabitation agreement).

For more information on this topic, please contact Megan Smith at msmith@offitkurman.com.