

Understanding the Necessity of a Pre-Nup

September 12, 2023

By Megan Smith

Originally posted on 5/21/2018, no content changes

In Pennsylvania, pre-nuptial agreements meeting the statutory requirements are generally enforceable and the best way to provide peace of mind prior to a marriage. The main reasons a pre-nuptial agreement may be necessary include:

- Protecting existing (pre-marital) assets;
- Protecting against potential future support obligations (spousal support, alimony pendente lite, and alimony);
- Protecting business interests, most often family or closely held businesses;
- Protecting assets for children of a prior relationship and
- Estate planning.

Pre-Marital Assets: Under the Pennsylvania Divorce Code, assets that are owned prior to the marriage and are maintained in separate names, continue to belong to the individual owner in the event of divorce. However, if the value of such an asset were to increase during the course of the marriage, the increase in value would be included in the marital estate and subject to equitable distribution. Protecting against the passive increase in value of pre-marital assets becoming part of the marital estate is one of the main reasons pre-nuptial agreements are recommended. Pre-nuptial agreements can also protect against active increases in value, such as ongoing contributions to a pre-marital 401(k) or payment of a mortgage on a pre-marital home.

Protecting against future support obligations: Consideration must be given to whether either party may have any support obligations in the future if the parties were to divorce. With the exception of support for children, parties can agree to contract specific provisions as to spousal support, alimony pendente lite, and alimony, or may choose to specifically negate any such obligation from arising by including certain provisions regarding same in a pre-nuptial agreement.

Protecting Business Interests: The division of a business or interest in a business can be an extremely litigious and costly exercise that is often required in any divorce involving a closely held or family business. Business appraisals are almost always necessary, and the obligation of one party to buy out the other party's interest can be onerous. In cases such as these, pre-nuptial agreements can be used to protect against this kind of litigation almost as an insurance policy as the business interest and many other aspects can be exempted from the marital estate.

Protecting assets for children and Estate Planning: These two aspects often go hand-in-hand. Certain assets can be exempted from a marital estate and protected for children from a prior relationship under both a will and a pre-nuptial agreement, which provides additional protection for such assets.

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