

Prenuptial Agreements

Pre-Nuptial Agreements Who needs them...Are they enforceable? Virtually everyone entering into matrimony does so with the assumption that the marriage will last forever. Statistics, however, reflect at least a fifty percent (50%) failure rate for first marriages and an alarmingly higher rate for subsequent marriages when money and children from prior relationships are at issue. As a result, more and more couples, whether entering into a marriage or deciding to live together without being married are signing contracts which dispose of their assets without the need for litigation. Young couples with few assets who anticipate building a financial future together often do not want or need a pre-nuptial agreement (hereinafter referred to as PNA). However, many couples entering into first marriages with no pre-acquired assets are opting for PNAs to remove the probability of costly and acrimonious divorces. First marriages where one spouse has a disproportionate share of assets demonstrate the necessity of a PNA. It is also applicable for subsequent marriages where one or both parties enter the relationship with significant assets acquired from past relationships or from the fruits of their own labor which they might want to protect for the children from prior partnerships. Despite grim divorce statistics, many people remain in unhappy marriages for fear of losing the assets they have acquired during the marriage or out of concern that divorce would cause them to lose the lifestyle to which they have become accustomed. Fear of losing one's assets applies to both men and women, since most households are comprised of two incomes and often, a woman earns more than her husband. PNAs would eliminate the need to remain in an unhappy circumstance. Opponents might argue that PNAs cause divorce by making it easier to dissolve a miserable circumstance. However, this contract in and of itself does not cause the problems which result in divorce; it merely makes the divorce process less combative. Case law favors the effectiveness of a properly drafted PNA, provided both parties have independent counsel and have made complete financial disclosure to the other at the time of the execution of the agreement. In the recent past, PNAs were routinely overturned by Probate Court judges when the aggrieved spouse claimed to have signed the agreement under duress. This is no longer the case, as courts tend to dismiss the "duress" defense as irrelevant. However, PNAs can be overturned if they fail to take into account future children born of the marriage. Those with significant assets prior to entering a marriage would be wise to consider the protection afforded by a PNA. Even those with few or no assets are deciding to eliminate the possibility of a contentious termination of their relationship by clearly defining the division of their future acquired assets prior to entering the marriage. In support of the concept of a pre-nuptial agreement, I am reminded of the adage while love is grand...divorce is one hundred grand.