

WHAT IS A KENTUCKY PRENUPTIAL AGREEMENT?

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Musselwhite Meinhardt & Staples, PSC



If you ask some people, they would tell you that a premarital agreement is a way to kill romance and ruin a wedding. In reality, a prenuptial agreement can bring a couple closer together as they work with each other to draft an agreement that outlines the details of how they will divide property and resolve financial issues in the event of a divorce.

The people who claim that a prenuptial agreement is a sign that the couple believes the marriage will eventually end fail to see that a prenuptial agreement provides the means for a couple to discuss financial issues in an open, honest and non-threatening manner. It helps them begin their marriage on a stronger financial footing as well as bring them closer together by sharpening their

mediation skills and the ability to compromise and understand the other person's point of view.

WHAT DOES A PRENUPTIAL AGREEMENT ADDRESS?



A prenuptial agreement, also referred to as a prenap, is a legal contract between a couple who are planning to get married. The agreement becomes effective when they are married. Prenups outline how the couple wants to resolve financial issues and divide marital property should they decide to end their marriage. Couples can address any financial issues they desire in a prenuptial agreement in addition to custody issues and support.

A comprehensive prenuptial agreement typically includes provisions for:

- The division of assets acquired during the marriage;
- Provisions for protecting premarital assets;
- Division of marital debts and identification of any premarital debts and agreements for how those debts should be paid after a divorce;
- Protect a premarital business, family money or inheritance;
- Outline the terms of when alimony will be paid and how much alimony will be paid;
- Address issues related to life support and beneficiaries;
- Outline custody terms and child support issues for children born during the marriage. The court is not bound to the terms of a prenuptial agreement if the agreement violates the child's best interest; and,
- Provide for children of a previous marriage through inheritance or specific bequeaths of property.

Couples can make a prenuptial agreement as detailed as they desire and they can include anything that does not violate state or federal law.

DO I NEED A PRENUPTIAL AGREEMENT?



Preuptial agreements can be useful in any situation; however, there are some situations where couples should seriously consider entering a prenuptial agreement.

- If either person or both people have substantial assets or property.
- If one or both people have significant debt prior to the marriage.
- If one or both people have children or grandchildren from a previous marriage.

- If one person has substantially more assets or a much higher income than the other person does.
- If one person or both people own a business, own an interest in a business or is a partner in a professional association (i.e. law firm, medical practice, accounting firm, etc.).

If one party plans to support the other party as they obtain a college degree, attend a professional school or begin a business venture.

DOES KENTUCKY REQUIRE SPECIFIC ELEMENTS TO BE INCLUDED IN A PRENUPTIAL AGREEMENT FOR IT TO BE VALID?

Prior to 1990, Kentucky Family Court Judges would not enforce prenuptial



agreements because the courts believed that prenuptial agreements were “destabilizing to the marital relationship and might promote or encourage marital breakup.” However, after two cases went all the way to the Kentucky Supreme Court in 1990, the

courts now accept prenuptial agreements as an enforceable contract between a

husband and a wife that makes settlement divorce issues much easier and efficient compared to litigating the divorce.

In order for a prenuptial agreement to be enforceable, it must be in writing signed by both parties, both parties must sign the agreement voluntarily without coercion by either party, both parties must participate in full disclosure and the agreement cannot be unconscionable at the time of signing or enforcement. It is also a good idea for both parties to have their own attorney during the entire process.



Having only one attorney makes it easier for one party to contest the agreement later by claiming he or she did not have proper representation and there was coercion to agree to the terms proposed by the party with the attorney.

Some parties videotape the signing of the agreement and sign the agreement in the presence of a notary public in order to reduce the risk of the agreement being unenforceable. A prenuptial agreement may be revoked if both parties agree sign a written revocation.

While you can find DIY prenuptial agreements online, you really need an attorney to draft the agreement and to assist during the negotiations. Again, each party should have his or her own attorney for the entire process. Having an attorney ensures that the prenuptial agreement does not violate any state or federal statutes and that both parties are represented and protected during the process. Hiring an attorney to draft your prenuptial agreement will decrease the chance that the agreement will be found to be unenforceable by the court.

PROS AND CONS OF PRENUPTIAL AGREEMENTS

Each couple is different; therefore, the pros and cons are typically specific to that couple's views, needs and wishes. However, there are a few pros and cons of prenuptial agreements that attorneys believe applies in most situations.

BENEFITS OF PRENUPTIAL AGREEMENTS

- Protects premarital assets, income and inheritance
- Protects inheritance for children of a previous marriage
- Divides assets and debts fairly because parties are not reacting out of hurt and anger as they are during a divorce proceeding
- Establishes ground rules for finances during the marriage

Opens communication between the parties about how they view money and finances

DISADVANTAGES OF PRENUPTIAL AGREEMENTS

- Prenups are viewed as unromantic
- One party may feel pressured to enter a prenuptial agreement to appease the other party
- If not drafted and executed properly, the agreement can be challenged and held unenforceable by a court

Can be expensive depending on the depth of the prenuptial agreement

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About the Author

Paul Musselwhite, Carol Blakeley Meinhart, Kimberly Musselwhite Staples, and Robert D. McIntosh are the experienced and knowledgeable attorneys that make up Musselwhite, Meinhart & Staples. With over 50 years of combined experience, they have been serving the legal needs of individuals, individuals in the military and families in Hardin county and all of central Kentucky with pride and dignity. Practicing in civil cases in Hardin county, central Kentucky and beyond, they are experienced in all types of law.

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