

What's A Premarital Agreement?

A Premarital Agreement (Prenup) is a written contract created by two people before they are married. It lists all of the property each person owns as well as any debts. It specifies what each person's property rights will be after the marriage. In short, it sorts out problems that could happen, long before they do.

It's not just a guard against a tough divorce, but a way for couples with or without children, wealthy or not, to clarify their financial rights and responsibilities during marriage. It also lets them discuss how to manage their finances after marriage and how to specify responsibility for debts—all so that they can enjoy a healthy financial situation and marriage.

Who Needs a Prenup?

- ◆ **Owner of substantial separate assets before marriage or expected during marriage:** A Premarital Agreement makes clear what assets each party claims as their separate property before marriage. It can also alter California laws that create a community property interest in a spouse's separate property, particularly where either spouse devotes substantial time to managing or improving that property or where a spouse uses community property to benefit their separate property.

Who Needs A Premarital Agreement?

- ◆ **Owner of interest in a business in which they work:** California law provides that in a divorce, the court can create a community interest in a business that a spouse owned or acquired before marriage where the spouse continues to work in the business during marriage. That result can be altered or eliminated in a Premarital Agreement. The Prenup can also incorporate provisions that are included in partnership agreements, such as allocation of different ownership and management rights in a business, allocation of riskier and safer investment assets between spouses, regulating certain business decisions, or regulating the managing spouse's reporting duties concerning the business to the other spouse.
- ◆ **Changing income earned during marriage to separate property:** Normally, income and benefits earned during marriage would be community property under California law. It is common in Premarital Agreements to change some or all of that income into the separate property of the person who earned the compensation. In that case it is advisable that the agreement include arrangements to pay for joint expenses, and for protection of a spouse who takes off work to care for children or family members. Additionally, if the parties do plan to acquire joint assets in the future, such as a house, the agreement can specify how title should be held to do that.

Can Premarital Agreements Limit Some Rights?

- ◆ **Parent who is remarrying:** Parents who are remarrying after raising a family usually want to protect their separate estates for their children. A Premarital Agreement is useful for this purpose, together with appropriate modifications to, or drafting of, estate planning documents after marriage
- ◆ **Employee expecting substantial bonus or equity benefits:** Normally, bonuses or equity benefits earned during marriage will be treated as community property, just like base salary. Spouses may agree, for example, that all employment income is separate property of the employee or that base salary is community, but bonus and equity benefits are separate property.
- ◆ **Regulating division of property in divorce:** Premarital Agreements can be used to limit or regulate a party's share of the property of the other party if there is a divorce. Alternatively, the parties can provide incentives to a spouse for the longevity of the marriage or meeting other targets.
- ◆ **Limiting spousal support in divorce:** California law allows parties to a Premarital Agreement to waive or limit their right to spousal support from the other party in the event of divorce.

Effects Of A Community Property State

California is a community property state, and its laws determine who owns the property that you acquire during your marriage, as well as what happens to it at divorce or death. State law also provides that your separate property includes the property you own before marriage, as well as the property you acquire during marriage by gift or inheritance.

Under the law, marriage is considered to be a contract between the marrying couple, and with that contract comes certain automatic property rights for each spouse.

For example, in the absence of a prenup stating otherwise, a spouse usually has the right to:

- ◆ Share ownership of property acquired during marriage, with the expectation that the property will be divided equally between the spouses in the event of a divorce or at death.
- ◆ Incur debts during marriage for which both spouses are liable.
- ◆ Share in the management and control of community property, including the right to sell it or give it away in some circumstances.
- ◆ Spousal support in the event of divorce.

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Premarital Agreements Are Not Just For The Rich

Getting married can be a substantial financial event, as well as a personal one.

While prenups are often used to protect the assets of the wealthy, couples of more modest means are increasingly turning to them for their own purposes.

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