

Premarital Checklist

There are many details to think about when you're planning your wedding; however, a prenuptial agreement (also known as a premarital agreement) shouldn't be left to the last minute. Here's a list of issues to think about. It often helps to know your own feelings about these issues before you decide to talk to your fiancé about them:

Premarital Assets and Debts:

You'll want to make an exhaustive list of your assets and debts that are currently in your name. It's required for your prenuptial agreement, and it's also good practice about being up- front and straightforward about financial issues with your new marital partner. Below are some questions to think about when thinking about premarital assets and debts:

- Once you've made your list, how will you handle premarital assets and debts in the event of a divorce?
- Will the assets and debts remain separate property, meaning that they will go back to the person who accumulated them before the marriage?
- Or will your separate property be inter-mingled with your marital property?
- What if one person's pre-marital property is used to pay off the other person's pre-marital debts(i.e. school loans)?
- Will the paying party need to be reimbursed, or is it a gift?
- What if you use premarital property to buy a home you'll own together?
- Will the paying party need to be reimbursed, or is it a gift?

Marital Property: Marital property describes the assets and debts that you will accumulate together once you are married. Below are some questions to think about regarding marital property:

- How will you handle the income and assets you accumulate together?
- Will they be joint, and 50/50?
- Will you use another arrangement?

Management of Assets and Income:

People tend to be either spenders or savers. Given that opposites tend to attract each other, it's typical for a couple to have very different money styles. That can work out just fine, provided that you each know about the other's priorities and goals and provided you can work out a way for each person's needs to be met. For example, one partner might be concerned about retirement savings and future security. The other partner may feel that money is to be enjoyed and spent for things like vacations and luxury vehicles as part of a well-lived life. Can these styles be reconciled? The answer is yes, of course, provided that you have a plan for what will be set aside for retirement and what's available to use for enjoyment. Some questions to ask yourself regarding the management of assets and income are:

- Who will make the financial decisions and handle the checkbook?
- Will you do it together, or will one person be the primary financial manager?
- What about large expenditures?
- Does your spouse need to ask you before buying that plasma TV or designer hand bag?
- How will the household bills get paid, and whose responsibility is it to pay them?
- Will you have joint bank accounts, separate bank accounts, or both?
- Do you have similar money styles?
- With respect to debt?
- With respect to savings?
- Have you discussed your long-term financial goals, and how each of you will contribute?
- What about retirement savings?

- Will the decision-making authority be different for pre-marital property or debt that belonged to one of you before the marriage?
- If one of you owes spousal support or child support from a previous marriage, how will those payments be made?
- From joint property or income, or separate property?
- In the event of a separation or divorce, would the other spouse want or expect a reimbursement for these payments made during the marriage?
- What if the obligation is informal—like voluntarily paying for an adult child’s college?

Credit and Debt:

Have you seen each other’s credit reports? Now might be a good time to have a serious talk about credit scores and priorities with respect to paying off old debt or accumulating new debt. Is it likely that either of you might over-borrow? Or refuse to borrow no matter how much sense it makes to the other person?

- Consider joint credit issues, as well as issues like pledging your home as collateral on business, or using a home equity line of credit to fund a business or tide it over in an economic downturn.
- Do either of you have bad credit? Will you and your spouse jointly sign on new credit obligations?
- Are back taxes owed? If so, how will they be paid? Jointly, individually, and from which checkbook?

Working:

What are your views on non-monetary contributions, like raising children or managing the household? Most states recognize these types of contributions during a marriage, but it’s important that you share your attitude, and that you know your

fiancé's attitude about these types of roles in a marriage. Below you will find some questions to think about in regarding work:

- What is your expectation about the kinds of jobs and income you will each have?
- Do either of you anticipate a career change at any point in time?
- Some jobs are riskier than others, like firefighters, military personnel, and stunt performers. Changing your job can impact the other spouse, especially if you become disabled thanks to an on-the-job injury.
- Other jobs pay less but are very personally rewarding. Teachers and nonprofit positions typically don't pay very well. How would you feel if your spouse changed careers?
- When do you plan to retire? As early as possible, or do you plan to work as long as you're able?
- Do you anticipate both of you continuing to work after having children? Or would one of you stay home? For how long?
- How will you handle move-away decisions?
- What if one of you was transferred for your work and had to move to another state?
- What if one of you wanted to move closer to extended family after having children?

Spousal Support and/or Alimony:

How do you feel about spousal support? In most states, the rights to claim support go to both the husband and wife. You don't have to address this in your agreement if you don't want to, but it makes sense to talk about it. Some issues you may want to talk about are the following:

- Will there be any limitations on the amount, terms and duration of support?
- Do you want to make terms about spousal support or alimony that are different than what your state law allows?

- Do you both expect to work, and to contribute to the household?
- What are those expectations?
- Even if you think you're in agreement, it's worthwhile to make sure you're both going into the marriage with the same expectations about earnings and work.
- Would there be a circumstance that would lead to one partner not working, such as a health problem or birth of a child? What about going back to school?
- Does that change your mind about how you feel about spousal support or alimony?

Gifts from Families:

Sometimes one set of parents or relatives gives a couple a large monetary gift, loan or a home down-payment. It is important to make clear what kind of gift this is. Below are some questions to ask when faced with this situation:

- Would the gift from the family be marital or community property, or the property of the spouse whose family gave the money?
- If it's a loan, who would be responsible for repaying it, and how and when? How formal will you be with the documentation if it is a loan?

Being clear between yourselves as well as with your own family will help you avoid conflict in the future.

Taxes:

Once you are married, your finances will be intertwined for tax purposes unless you agree otherwise as part of your premarital agreement. It is important to be clear on what your attitudes and opinions are in regards to paying taxes. Some questions you may want to ask each other:

- Will you file separate taxes, or joint taxes?

- Does either partner have questionable tax deductions or a lighthearted attitude toward filing taxes at all? Does that worry the other partner? Is there old tax debt?
- Who will be responsible for that debt, knowing that a refund while you are married could be seized to pay an old, premarital debt?

Higher Education:

Sometimes one spouse will want to or need to return to school. This situation may leave one spouse to support the other while he or she pursues a degree. In this situation, it is important to communicate clearly with each other the expectations of each party. Some helpful questions to ask:

- Will one of you be attending college, graduate school, or professional school during the marriage?
- Will one of you have to support the other while he or she is in school?
- How will you deal with this sacrifice made by one person if the marriage doesn't work out?
- How will student loans be repaid?
- Would the expectations about income and earnings change if one person wants to go back to school after you've been married several years?

Duration of the Premarital Agreement:

It is up to you and your spouse to decide how long a premarital agreement may remain in effect. Couples can ask themselves if the agreement will stand forever or if it will expire at some point:

- Does having children change your opinion on how your agreement should work?
- What about being married 10 years, 20, 30, or 50 years? Would the agreement ever expire or be renegotiated?

- If you separate, does it matter who chooses to end the marriage? Does it matter why?
- Would you want for the agreement to be renegotiated at a specific time, like 5 years after the marriage, or after the birth of the first child?

Business ownership:

If you or your spouse own a business separately, there are special issues you should consider.

- Would your prenuptial agreement include an indemnification on the business debts and taxes—business, personal, back taxes, payroll taxes?
- Are there issues with the type of business entity, like a subchapter S corporation or d/b/a, and how the corporate spouse determines his or her own income?
- Many small corporations have a lot of discretion with how much of the corporation's income is taken as salary or income for the corporation's officers or employees.
- Do you want to make provisions for forensic accountant or auditing books in the event of a separation or divorce?
- Do you want an agreement on how much income will be contributed to the household and how much might be kept separate?
- What if a premarital business starts a new business or subsidiary after the marriage?
- What if one or the other of you works for the other person in a pre-marital business?

There can be many “out of job market” issues, so negotiating your terms of employment with your spouse before joining the business can be an important step.

Fault:

Fault can be defined as who is to blame for the divorce. Fault can be evidenced by an affair, drug or alcohol abuse, among other things. However, most state laws either won't consider fault, or barely consider fault, in dividing property or awarding spousal support in a divorce situation:

- How do you and your fiancé feel about fault?
- Would it make a difference to you in your property settlement or spousal support if you felt one person contributed more to the breakdown of the marriage than the other person?

Death or Disability:

You will want to have a comprehensive estate plan in place soon after your wedding, particularly if you have children from previous relationships, so that your assets and debts are handled the way you intend if you were to pass away.

- Does it make a difference if you're separated or living separately when one of you dies (even though you haven't filed for a divorce) or if one of you dies while you're happily married?
- Do either of you have children already, or people who'd inherit from you?
- Do you have life insurance? Often, life insurance can be used to protect either the spouse's interests, or your children from a previous relationship's interests.
- Who will you name as beneficiary on your retirement plans, IRA's, and survivor annuity benefits on pension plans?
- Would your prenuptial agreement end on death?
- Will the surviving spouse be able to support the same lifestyle in the event of your death?
- Would either of you have immediate access to funds if one of you dies?
- Will he or she be able to maintain residence if you pass away?

- Are there certain family heirlooms or money which you'd like to make sure ends up with one person's family?
- What would happen if one of you became incapacitated or disabled?
- Would that change how finances are handled?
- What if one of you had to use separate property to support the other person?
- Do you need disability insurance? Long term care insurance?

General:In order to begin drafting a premarital agreement, you'll each need a complete list of your current assets, debts and income, as well as any health issues you might have.

You may also want to consider including a clause that says you'll mediate any issues that come up that you can't resolve on your own or that you will seek professional marriage counseling before considering divorce. Also, another helpful clause may state that the two of you will choose to mediate in the event of a divorce, or use a collaborative law or alternative dispute resolution process rather than litigation.