

Client Newsletter

Dibble & Miller, P.C.

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Prenuptial & Postnuptial Agreements—Why They Are Important

One of the more frequent family law inquiries we now receive concerns issues of prenuptial agreements. With more couples marrying later in life or marrying for a second time, and with roughly half of all first-time marriages ending in divorce, prenuptial agreements are no longer considered the province of only the affluent and well-known. Indeed, many couples now desire to protect, manage or enhance their personal, family, or business assets and specify what rights each party will have in the event of a divorce, and upon the death of a party. There is a common misperception that only the well-to-do benefit from prenuptial and postnuptial agreements, but such agreements can be critical when there is a need to protect and preserve assets (e.g. small business, restaurant, a rental property, etc.) even if these assets are very modest.

What Is A Prenuptial Agreement?

Prenuptial: A prenuptial (before marriage) agreement is a formal contract, specifically sanctioned by New York law, between two parties entered into prior to and in contemplation of their marriage. Because of marriage equality in New York, same gender couples may enter into prenuptial agreements. The purpose of the agreement is to settle issues primarily relating to ownership and distribution of property in the event the relationship ends in death or the failure of the marriage. Because of the broad scope and extensive effect of such agreements, there are strict procedural rules that must be followed to ensure their validity. These are not do-it-yourself documents or forms to be copied from an internet site.

Postnuptial: These agreements are not limited to parties about to be married, but also may be entered into by parties who are already married, including same gender couples. A postnuptial (after marriage) agreement may be appropriate where the parties to the marriage decide to make a clear and binding arrangement reflective of their desire to control the disposition of their assets.

When Is A Prenuptial Agreement Appropriate?

Prenuptial (or postnuptial) agreements can and should be considered in a variety of different circumstances, including the following: (1) a second marriage where one party comes to the marriage with significant assets that she/he wants to ensure will be inherited by her/his children from the first marriage; (2) a second marriage where the couple's "bonding" is such that the couple does not wish to combine assets, such as a situation involving two high net-worth professionals or business persons who do not want to combine their assets; (3) a first or second marriage where one party stands to inherit money or other assets and the person(s) intending to bequeath such assets want(s) to keep them in the immediate family and ensure that the same do not get distributed to the spouse of the beneficiary of the will; (4) where one of the prospective spouses to the marriage has open, unresolved tax, financial or criminal issues and the other prospective spouse wants to ensure that her/his assets do not become mingled with those of the spouse with such issues; (5) "parallel marriages," i.e., where the marriage is for the convenience of the parties, for intimate relations or

companionship, but the parties desire to lead separate financial lives and wish to maintain their assets separately; and (6) where one party to the marriage has built a business and/or accumulated assets and simply does not want to risk these assets being distributed to the other spouse and/or does not want to risk being forced to sell the business or liquidate the assets after the marriage to fund equitable distribution to the other spouse in the event that the marriage should end in divorce.

Having an effective, carefully drawn agreement in place wisely forces a couple to recognize that marriage is, in fact, a legal contract. To that end, prenuptial and postnuptial agreements can address how specific assets such as earnings, businesses, or investments, for example, are to be classified, that is, as "separate property" or, alternatively, as "marital property."

Validity of Agreement

In New York, properly drafted and executed prenuptial and postnuptial agreements ordinarily will be upheld as valid and enforceable unless the party seeking to have the agreement set aside offers credible evidence to establish fraud, overreaching, concealment, misrepresentation, or some form of deception on the part of the other party, or that the agreement was the product of coercion and duress. To overturn the agreement, a party must show that the agreement is manifestly unfair and that the unfairness was the result of overreaching by the other party. Anything less than clear evidence of fraud, duress, or other overreaching will not be sufficient to rescind the agreement. For example, one party's threat to cancel the wedding if the other party refused to sign the prenuptial agreement, or one party's failure to disclose his or her complete financial status, were not, standing alone, enough to rescind a prenuptial agreement.

Marriage Is A Business Deal

The fact is that marriage is not only the joining of hearts and the combination of home, family, social, and financial structures; the reality is that marriage also is a business arrangement. Prenuptial and postnuptial agreements can be helpful in that they not only get couples discussing what they want from marriage but also what will happen if the marriage does not last.

Other "Tips" to Consider

1. Do start the preparation of your prenuptial agreement at least six (6) months prior to the wedding day;
2. Do not let anyone pressure you into signing a prenuptial or postnuptial agreement;
3. Do hire an attorney to represent you (the attorney should be experienced in family law and estate planning, as well as debtor and creditor law) to draft or review a proposed agreement from your fiancé or spouse;
4. Do ask as many questions of your attorney as you need to until you feel you completely understand the terms of a proposed agreement;
5. Do not sign an agreement until you are comfortable signing it;
6. Do not ignore your intuition (instinct);
7. Do hire an attorney (the attorney should be experienced in family law and estate planning, as well as debtor and creditor law) if you think you need to protect your assets by prenuptial or postnuptial agreement.

Consult Dibble & Miller, P.C.

Dibble & Miller, P.C. has experienced family law attorneys who can guide clients through the frequently complicated domestic relations laws which exist in our state, including issues involving prenuptial and postnuptial agreements regardless of the value of their assets. Family law issues are personal and typically family law clients have a need for someone knowledgeable on their side who can competently and empathetically guide them through what can be an unfamiliar, emotional, and intimidating experience.

Dibble & Miller, P.C., is a full service law firm for individuals, start up businesses and small businesses. Dibble & Miller, P. C. is fortunate to have attorneys on its staff with extensive experience in matrimonial, family, tax, criminal, litigation, estate planning and debtor and creditor law who effectively defend clients and guide them in navigating frequently complicated legal issues.

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WE THANK YOU FOR USING OUR FIRM.

PLEASE REMEMBER THAT WE HAVE AN EXTENSIVE PRACTICE TO SERVE YOU:

- **Business Agreements** — *All Types, including Non-Compete, Buy-Sell, Non-Disclosure, Employment, Shareholder and Partnership Agreements*
- **Business Formations** — *Start-Up Businesses and Partnerships, Business Purchase and Sale Agreements, and Formation of Corporations and LLC*
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- **Estate Planning** — *Preparation of Wills, Trusts, Health Care Proxies, and Powers of Attorney and Estate Planning and Administration*
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- **Real Estate** — *Residential and Commercial Purchases, Sales, Closings, Mortgages, Land Contracts, Foreclosures and Real Estate Leases*
- **Tax Defense** — *Defense of IRS & NYS Tax Compliance Enforcement:*
 - *Defense against Civil and Criminal Tax, Workers Compensation and Unemployment Audits, Investigations, Protests and Litigation*
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 - *Resolution of Tax Levies, Liens and Income Executions*
 - *Responsible Person and TFRP Defense for Trust Funds, Sales, Use and Withholding Taxes Assessments and Collections*
 - *Preparation, Filing and Negotiation of Offers in Compromise*
 - *Negotiation of Tax Installment Agreements and Tax Payment Plans*
 - *Innocent & Injured Spouse Defense*

***** IF YOU NEED LEGAL ADVICE, PLEASE CONTACT US FOR A FREE CONSULTATION *****

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