

Financial Aspects of Premarital Agreements

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A premarital agreement can resolve future concerns over money, work, children, the home and other mutual issues. This publication lists items to consider and legal aspects of a premarital agreement.

Years ago marriage contracts were mainly for the rich or royal families who wanted to protect a helpless bride or preserve the fortunes of a dynasty. Today, however, both the bride and groom may bring to marriage—and want to protect—income each earned and assets each has acquired. Some may also want to protect inheritances for children from earlier marriages.

A legal method used by couples to resolve the difficult issues of money, property and prior financial commitments is a premarital agreement. The Montana Uniform Premarital Agreement Act defines a premarital agreement as “an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.”¹

Who Needs a Premarital Agreement?

A premarital agreement could be considered if either of the future partners:

- owns valuables such as real estate, stocks, bonds, jewelry, furniture, or collectibles that he or she wants to keep as separate property;
- wants to clarify obligations to parents, a former spouse, or a child from a previous marriage;
- wants to clarify rights and role of the new spouse in a family business;

- wants an inheritance received before or during the upcoming marriage to remain as separate property, instead of marital property;
- has a vested interest in a pension plan at work;
- wants to designate how much an employed spouse contributes to the future earnings of a husband or wife who is studying for a profession such as medicine or law.

What Items Should Be Considered in a Premarital Agreement?

Listed below are items to consider when planning for your premarital agreement.¹ Both husband and wife-to-be can prepare the information separately. After discussions, you may decide that some property may be held jointly instead of in separate names. Major concerns should be discussed with your future spouse before discussing the formal document with your respective attorneys.

1. Real estate. List all separate real estate holdings with their values, indebtedness, and payments. To whom would you want this property to pass on your death? If you divorce? Will you sell your home(s)? Invest in a different home? If a home is sold, will the proceeds remain in the name of the owner or will it be placed in joint

tenancy with right of survivorship with your spouse?

2. Assets. List all stocks, bonds, money market funds, mutual funds, annuities, savings accounts, second mortgages, and money owed to you. What portion, if any, will be merged upon marriage and what will remain as sole ownership in each spouse’s name? Who do you want to make decisions about the assets? What do you want to happen to the assets upon your death? What if you divorce?

3. Furniture and furnishings. What items will be jointly owned? What items will be separately owned? Will some items be sold or given away before or after the marriage?

4. Pension funds. Determine if anyone else (for example, a former spouse) has a claim on your pensions. Will that change with the new marriage? Will you need to change the beneficiary designation?

5. Life insurance. Decide if the present beneficiary designation needs to be changed. Is the present amount of insurance adequate for your new family?

6. Debts. List all credit payments (other than those already covered in Item 1) that will remain at the time of your wedding. Who is to pay these debts? You? Your spouse? Both of you?

7. Family Obligations. What financial promises, both oral and written, have been made to your children concerning education, weddings, business ventures, car insurance, support, and so on? Which, if any, of these issues should be discussed with the children?

8. Checking/savings accounts. Will accounts be kept in sole ownership or placed in joint tenancy with right of survivorship? Will you need a household account? Who pays into it, and how much? Will a safe-deposit box be leased in joint tenancy or will each have a separate box? Who will keep the keys?

9. Former spouse. If your previous marriage ended in divorce, disclose all obligations, financial and otherwise, that were made to the former spouse including property settlement payments, spouse and/or child support payments, life insurance, and health insurance, if any. If your former spouse died, detail any provision changes remarriage may cause in your financial situation. Are you receiving pension benefits or other payments that will cease?

10. Credit cards. List all. Will they remain in separate names? Or will you reapply for credit in both names? Will a limit be set on the amount that can be charged without consulting the other? Who pays the bills and keeps the records?

11. Automobile(s). Will the title(s) be kept in separate names or reissued in joint tenancy? Who will pay the insurance? Should insurance coverage be changed?

12. Employment. Will earnings be kept in separate accounts or pooled? Will the marriage affect either party's ability to move for employment? Will either discontinue working? What effect will transfer of one party to a different community have on the other party? What effect will an early retirement of one spouse have on the relationship and financial situation?

13. Parents. Does either party have aging parents who are dependent now or may become so? Will they live with you? Who will care

for them? What financial help will be given?

14. Children. What are each party's financial and/or parental responsibilities? If a child has special needs, what are they and how will they be handled? Are children planned in the forthcoming marriage?

15. Religious financial commitments. Same church? Separate churches with no interference? Will contributions come from husband, wife, or both?

16. Charitable contributions. Who decides what organizations are worthy? Will contributions come from husband, wife, or both?

17. Persona Wills. Specify that separate wills are to be written; itemize provisions each should make for the other in his or her will. Incorporate reference to a separate listing of tangible personal property in the will. (For more information, request the MSU Extension MontGuide on Wills, HR 198906.)

18. Periodic revisions. Formally agree when you will review your premarital agreement. If modifications are then in order, agree for each party to seek legal counsel.

Must the Agreement Be in Writing?

The Montana Uniform Premarital Agreement Act requires that the agreement be in writing and signed by both parties. It becomes effective upon marriage. Each party should reveal fully his or her respective financial position. Evidence of this disclosure can be made by attaching a complete and accurate financial statement to the agreement as an exhibit.² Because a premarital contract is a legal document, the logical person to draft it is an attorney who practices family law, but you and your spouse-to-be should work out the details first.

Can My Premarital Agreement Substitute for a Will?

No, each partner should still have a will. A will can be signed and

changed only by the person who wrote it. A premarital agreement can be changed only by both parties. A premarital agreement may help minimize tension between adult children and the new stepparent. Adult children may fear the stepparent will receive their parent's assets upon death.

Isn't a Premarital Agreement a Pessimistic, Potentially Destructive Way to Begin a Marriage?

Some couples have broken up or indefinitely postponed the wedding after beginning premarital contract negotiations. If they can't struggle through writing a premarital agreement, how could they struggle through a marriage?³

In the open discussion and preparation of materials for the premarital contract, you and your prospective spouse will learn important facts about one another's values, attitudes toward family and property, and lifestyles. Since one shaky provision can upset an entire contract, you may want a severability clause. This provides that even if one portion of the agreement proves illegal or unenforceable, the rest will still be valid.⁴

Before Signing

Each party should have individual legal counsel before signing the contract. Without a separate attorney for each spouse, the potential exists for a judge to set aside the premarital agreement.

Example: In one situation, a wealthy man had his fiancée sign away all rights to his personal assets should they divorce. When they did divorce, the judge set aside the premarital agreement, ruling in this case that the woman's lack of legal counsel before signing invalidated the contract.

While consulting with two attorneys may seem an unnecessary added expense, it is not. The goal is to develop a premarital agreement that is fair and advantageous to both parties, their children, and their families.

What if We Change Our Minds After the Agreement is Signed?

Your attorney should include a clause which allows for modification of the contract upon the joint written consent of both parties. Such a provision allows for flexibility in coping with changed circumstances. For example, a couple may wish to renegotiate a contract provision after a certain period of time or after birth of a child.

Summary

A premarital agreement can create an atmosphere of open discussion in your new relationship. This will carry over so that future concerns about money, work, children, the home, and other mutual issues can be discussed openly. Montana courts will uphold premarital agreements when both parties understand the legal consequences of the contract at the time they sign it. Both parties need to be aware of all important facts at the time the agreement is written. The agreement should be signed only if both parties truly agree with the terms.⁵

Both spouses should practice financial management that is in keeping with the premarital agreement. For example, it would complicate the legal agreement if property were placed in joint tenancy when the agreement stated it was to remain in separate names. Further information is available in the MSU Extension MontGuides "Estate Planning: Property Ownership," 198907 HR.

Notes

¹Uniform Premarital Agreement Act, Montana Codes Annotated 40 - 2 - 601 through 610.

²Kuyper, Neal A. "The Business of Remarriage," *Dynamic Years*, (September-October 1984), 33 - 35.

³"Prenuptial Contracts: For Better or Worse?" *Consumer Views*, Vol. 16, No. 9, (September 1985).

⁴Dulaney, Carol and Joan Jonkel. "Until Dissolution Do Us Part: Premarital Contracts An Overview of Their Content and Validity," *Montana Lawyer*, (September 1980), 3-7.

⁵Mahar, Margaret. "Striking A Deal Before Tying the Knot," *Money*, (January 1984), 131-135.

Other Resources

Making Decisions When a Marriage Ends: A Montana Guide. \$5. EB 155. Order through your local MSU Extension office or send \$5 to: MSU Extension Publications
PO Box 172040
Bozeman, MT 59717-2040

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