

MEMO REGARDING PREMARITAL AGREEMENTS

In California, premarital agreements are governed by the Uniform Premarital Agreement Act in Family Code 1600 et seq. This statute establishes the basic requirements for a valid premarital agreement. Such agreements, however, can also address a broad range of issues not referred to in the statute.

In order to be enforceable under the Uniform Premarital Agreement Act we recommend and require that:

1. Each party make a full disclosure of their property and financial obligations;
2. Each party be represented by independent legal counsel; and
3. The final form of the agreement be in the hands of each party at least seven (7) days prior to execution of the document.

Here is a list of key areas that you should discuss with your prospective spouse when considering a premarital agreement:

1. Character of separate property during marriage;
2. Characterization of income and appreciation of separate property assets after marriage;
3. Characterization of income after marriage;
4. Liability for debts;
5. Household accounts and reimbursement for living expenses;
6. Tax returns and the right to file separately;
7. Disposition of assets upon divorce;
8. Character of assets acquired with borrowed funds;
9. Alimony or spousal support in the event of divorce;
10. Disposition of assets on death;
11. Waiver of statutory rights upon death;
12. Use of home after death; and
13. Control of pension/retirement plans at death.

It's important to keep in mind that even a properly prepared, negotiated, and signed premarital agreement may be set aside by the Court at the time of enforcement if the Court deems the agreement "unconscionable." Is unclear what that term means, but you should be aware that the final terms of this agreement may not be enforceable, even if agreed to and signed by both parties.