

Michigan Post-Nuptial Agreements

Most are aware of prenuptial agreements: that they are a way for spouses coming to a marriage to forego many of their legal rights in their spouses property upon death or divorce. Though, not as popular, but just as effective, are Post-Nuptial Agreements. What follows is a quick primer on the usefulness and requirements of such agreements.

What is a Post-Nuptial Agreement?

Like a prenuptial agreement, a post-nuptial agreement is a contract parties enter into as a way to define their rights to their spouse's property at death or divorce and to supersede many of the rights imposed by law. However, while a prenuptial agreement is entered into *prior* to the marriage, the post-nuptial agreement necessarily is made *after*.

Reasons for a Post-Nuptial Agreement

There are a number of reasons why parties would want to supersede their rights in their spouse's property as imposed by law. The most common is that a spouse wishes to protect the property he or she brought to the marriage from disposition during a divorce proceeding, especially in those instances where one spouse may have significantly more property than the other. Another common example is to protect the inheritance rights of the children the spouse may have from a prior marriage.

While post-nuptial agreements are an effective way to protect property, the *motivation* of a spouse to enter one isn't always so obvious. With a prenuptial agreement failure to enter the agreement may cause one party to simply walk away from the marriage before it is performed, whereas with a post-nuptial agreement the parties are already married, the property rights are already vested and therefore the coercive element of cancelling the wedding no longer exists. As a post-nuptial agreement supersedes already existing rights, the motivation to enter one may be, at times, mystifying. Still, mystifying or not, post-nuptial agreements are far from rare.

Requirements for a valid Post-Nuptial Agreement

First and foremost, post-nuptial agreements are contracts and must conform with all relevant contract laws. After this, they must generally meet the same

requirements of a prenuptial agreement. They must be in writing, entered into voluntarily, without fraud, mistake or duress and with full disclosure of the opposing spouses assets and the party's potential rights in that property. They must also be fair and equitable and enforcement of the contract must not be unconscionable. Also, while it is understood that these agreements are made with one eye on the possibility of divorce, they must not be made in actual contemplation of divorce, i.e. as a way to facilitate a current or impending divorce.

Warning

The information contained in this article is specific to Michigan and should not be taken to speak to any other state or its requirements. As always, consult with a licensed attorney in your area before taking any action.

MCL 700.2205

MCL 566.132

Rockwell v. Estate of Rockwell, 180 NW2d 498 (1970)