

What's Mine is Mine: Prenuptial Agreements in Michigan

When a couple marries, the marriage creates in each spouse certain rights in the other's property which can lead to a conflict upon divorce or death. However, these property rights and disputes can easily be avoided simply by signing a prenuptial agreement.

What is a Prenuptial Agreement?

A prenuptial agreement is just like any other contract, created in contemplation of marriage by couples wishing to opt-out of the statutory requirements about the disposition of property upon the divorce of the parties or death of one spouse. Because it is a contract it must conform to contract law, with one notable exception. In general, oral contracts are enforceable, but oral prenuptial agreements are not, though there have been instances when they were. Even should you be able to enforce an oral prenuptial agreement it is still advisable to reduce the agreement to writing, if only to eliminate disputes that would arise from a difference of memory.

Enforceability

The main requirement the courts look for when enforcing a prenuptial agreement is that agreement is fair. In determining fairness the courts look to three factors, which will be explained in more detail below:

- 1) Was the agreement obtained through fraud, duress, mistake, misrepresentation or nondisclosure of a material fact;
- 2) Was the agreement unconscionable when executed; and
- 3) Have facts and circumstances so changed since the agreement was executed that would make enforcement of it unfair or unreasonable.

If the court answers 'no' to all criteria, the agreement will be enforced.

Fraud, duress, mistake, misrepresentation or nondisclosure of a material fact

When entering a prenuptial agreement – or any contract – the law specifically forbids one party from tricking or misleading another into signing the agreement. But because of the nature of a marriage the courts impose a specific duty on the parties to disclose all material facts relevant to entering the prenuptial agreement, something that is not required of a run-of-the-mill contract. While this burden is placed upon both parties this requirement is specifically aimed at the party seeking the agreement.

Unconscionability

Unconscionability is a difficult concept to define and therefore is controversial, but this does not mean it is impossible to understand. Indeed, when evaluating whether or not a prenuptial agreement is unconscionable the court is looking for some unfairness so great that it shocks the mind.

Changed Circumstances

The court may invalidate a prenuptial agreement if an unfairness results from changed circumstances, but generally only when the change of circumstances was something unforeseeable at the time of the making of the agreement.

Warning

A prenuptial agreement is a good way to avoid messy conflicts at divorce or death, however, as laws vary from state to state it is always advisable to consult an attorney prior to entering any agreement.

MCL 557.28, MCL 566.132

Reed v. Reed 693 NW2d 825 (Mich 2005)