

# A Growing Need for Prenuptial Agreements

## Law Recognizes Growing Need for Prenuptial Agreements

Prior to marriage, increasing numbers of Hoosier couples are negotiating contracts that provide how their property will be distributed if their marriage ends in divorce. In addition to asset distribution, these premarital agreements -- sometimes referred to as prenuptial or antenuptial agreements -- may also deal with inheritances and claims made during divorce for spousal maintenance, attorney's fees and more.

The increased frequency of second or subsequent marriages, coupled with Indiana's particular divorce laws, have been the driving force behind the growing popularity of premarital contracts.

Premarital agreements are an especially good idea in Indiana because, without a premarital contract, the state's divorce laws control what property is in the marital pot and how it will be distributed upon dissolution of marriage. For example, Indiana's divorce statute, unlike those in many other states, does not recognize a difference between property owned by one spouse prior to the marriage and property acquired jointly during the marriage by the couple. Also, Indiana's law states that there is a rebuttable presumption that all the property should be distributed in equal shares upon divorce.

While the spouse who brought property into the marriage or inherited property from family can argue to the court that he should get more than 50 percent of the marital property because of those contributions, he could actually end up with less than 50 percent. The reason is that, without a premarital contract to insure that he gets back what he brought in or inherited, the other spouse could argue she should get more than 50 percent of the property, including the previously owned or inherited property, because she earns less or is disabled or the primary custodian of the children. In short, one of the main reasons for a premarital contract is to let individuals -- not the state -- define what is and what is not in the marital pot and how it will be divided upon divorce or death.

Some people fail to recognize premarital contracts because of the mistaken belief that courts will not enforce them. While such agreements have long been favored by the courts as a means of settling property rights in the event of death, our state Supreme Court has held that an antenuptial agreement must be enforced as written unless it was obtained by fraud, undue influence or was unconscionable. Our state's legislature enacted the Uniform Premarital Agreement Act to ensure the enforceability of a valid prenuptial agreement upon divorce. The law is clear that the contract may pertain to virtually any of the spouses' personal injury and legal rights and obligations.

Practically, the only limit on such agreements is that they may not adversely affect child support; but it may eliminate an obligation to support a spouse after separation or divorce, even a disabled spouse; except in cases of extreme hardship.

## **A Growing Need for Prenuptial Agreements (cont.)**

If a couple approaches the negotiation and preparation of a premarital contract with the goal of developing a satisfactory marriage and to minimize misunderstandings and conflict during the marriage or in the event of a divorce, the prenuptial agreement may have the beneficial effect of improving communications between the spouses and promoting domestic tranquility



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