



IF YOU OR A FAMILY MEMBER PLANS TO GET MARRIED, WHAT STEPS SHOULD BE TAKEN TO PROTECT ASSETS OR ACCESS TO FAMILY ASSETS?

Wealthy individuals contemplating marriage should consider entering into a premarital agreement. As its name suggests, a premarital agreement is an agreement in writing entered into by the future spouses prior to marriage which contains provisions regarding ownership of property. The Agreement may contain provisions regarding disposition of property upon marital dissolution, death, or the occurrence of any other event; modification or elimination of spousal support; ownership rights in death benefits from life insurance policies; and rights to retirement plans. The parties may also agree to execute a Will or trust that reflects these provisions.

Each state's law differs on the enforceability of premarital agreements. Generally, a premarital agreement may be deemed unenforceable if it is not properly prepared or executed. As a general rule, to render a premarital agreement unenforceable, one must prove that: (1) he or she did not execute the agreement voluntarily; (2) the agreement was unconscionable when it was executed or when enforcement is sought; (3) he or she was not provided fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party before execution of the agreement; or (4) he or she was not afforded a reasonable opportunity to consult with independent counsel. Absent the existence of any such facts, a premarital agreement may be amended or revoked only by a written agreement signed by both parties. Generally, courts will typically enforce a premarital agreement unless the terms are unconscionable either at the time it was executed or at the time of the separation.

It is important that an estate plan accurately reflect such person's obligations under the premarital agreement. The act of marriage will entitle the spouse to potentially contest the Will, elect against the Will and take an "elective share" of the estate. Most states provide some sort of "elective share" for a spouse who was written out of his or her spouse's Will. Each state differs as to what is included and what is not included in calculating the elective share. For example, New York includes assets held in a Revocable Trust at the time of death while Connecticut, currently, does not.