



Domestic Relations

Class 2

Child Arrangements



FAMILY I

Prenuptial Agreements - Purposes

- Under state laws, spouses have certain rights to the other spouse's property; including:
 - intestacy share in the estate
 - elective share
 - presumption in favor of being appointed a fiduciary.
 - "equitable distribution" upon divorce.
 - alimony/ child support.
- Historically, courts would not enforce agreements that change these rules, since they contemplated or even encouraged divorce.
- However, today all of these rights can be given away by contract agreement between the parties!
- Thus, people who have substantial property before the marriage can "protect" that property from the new spouse with a **prenuptial agreement**.



Prenuptial Agreements - Requirements

1. **Consideration:**

As with any other contract, each side must give something up for a contract to be valid. In general, the consideration that supports the contract is the agreement to marry itself.



Prenuptial Agreements - Requirements

1. Consideration

2. Writing:

Under the Statute of Frauds, any promise in consideration of marriage must be in writing to be enforceable. Thus, pre-nuptial agreements must be in writing. (Some states even require a formal execution.)



Prenuptial Agreements - Requirements

- 1. Consideration**
- 2. Writing**
- 3. Adequate provisions for the needs of each spouse (“fairness”):**

Courts may refuse to enforce a pre-nuptial agreement if it finds the agreement to be unconscionable.



Prenuptial Agreements - Requirements

- 1. Consideration**
- 2. Writing**
- 3. Adequate provisions for the needs of each spouse (“fairness”)**
- 4. Disclosure:**
Unless each party gives a full and accurate disclosure of assets, that party will not be able to enforce the agreement.



Prenuptial Agreements - Requirements

- 1. Consideration**
- 2. Writing**
- 3. Adequate provisions for the needs of each spouse (“fairness”)**
- 4. Disclosure**
- 5. Independent Counsel:**
Each party must have full opportunity to consult with and retain his or her independent counsel.



Prenuptial Agreements - Requirements

- 1. Consideration**
- 2. Writing**
- 3. Adequate provisions for the needs of each spouse (“fairness”)**
- 4. Disclosure**
- 5. Independent Counsel**
- 6. Reasonable Time:**
Each party must have been given enough time to carefully consider the agreement before signing it.



Uniform Premarital Agreement Act of 1983

- Designed to make the rules pertaining to prenuptial agreements consistent throughout the country.
- Adopted by 28 states.
- Some of the most important provisions:
 1. Agreements must be in writing and signed by both parties.
 2. Agreements are enforceable without formal consideration.
 3. Agreements may alter the rights and obligations of both parties in many areas, including disposition of money upon dissolution of the marriage or death of the parties.
 4. Agreements MAY NOT adversely affect child support.
 5. Agreements become effective only upon marriage of the parties.
 6. Agreements are null and void if:
 - They were not signed voluntarily by both parties
 - The agreement is unconscionable.
 - Full disclosure of assets was not made.



