



ASK AN ATTORNEY

MARITAL PROPERTY, DEBT & PRENUPTIAL AGREEMENTS

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IS ARIZONA A COMMUNITY PROPERTY STATE?

Arizona is one of eight states that observe community property laws with respect to marriage. As a general rule the community property of a married couple is divided up equally upon a divorce whereas separate property is awarded to the spouse acquiring it. Additionally, a spouse can only convey by will or trust at their death that spouse's one-half interest in community property.

WHAT IS COMMUNITY PROPERTY?

Community property is any income received by either spouse during the marriage and any property or personal property acquired with income earned during the marriage. This includes, but is not limited to, bank and investment accounts, houses, pension plans, 401K plans, businesses, stock, life insurance, motor vehicles, and furnishings.

WHAT IS SEPARATE PROPERTY?

Separate property is all property owned by a spouse prior to marriage and property acquired during marriage that was a gift, bequest, or inheritance made by a person for the exclusive benefit of you or your spouse.

WHAT ABOUT DEBT AND LIABILITY?

Debts incurred before marriage are the responsibility of the spouse incurring them. After marriage your spouse's debts and liabilities become your legal responsibilities too. These debts and liabilities include credit card bills, medical bills, tax obligations, and nursing home expenses.

WHAT HAPPENS WHEN COMMUNITY PROPERTY AND SEPARATE PROPERTY ARE COMMINGLED?

Spouses often commingle their community and separate property assets during marriage. The mere mixing of community property and separate property assets does not necessarily change the character of the property. As long as each asset remains identified, the property will remain either community or separate. However, if it is impossible to trace the source of the property, the commingled assets will be treated as community property.

WHAT IS A PRENUPTIAL AGREEMENT?

It is an agreement between parties in an anticipation of their marriage that usually has the effect of altering the laws of community property in the event of a divorce or legal separation.

WHAT MAKES A PRENUPTIAL AGREEMENT VALID?

Prenuptial agreements are governed in Arizona by the Arizona Uniform Premarital Agreement Act in Title 25. A prenuptial agreement must be in writing and signed by both parties. It becomes effective on marriage of the parties. The agreement is not enforceable if the party against whom enforcement is sought proves that the party did not execute the agreement voluntarily or that the agreement was unconscionable when it was executed and before execution of the agreement that party:

Was not provided a fair and reasonable disclosure of the property and the financial obligations of the other party. Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided. Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

Generally, the waiver of spousal maintenance will be enforced. Prenuptial agreements regarding future child custody/visitation and child support are not enforceable.



WHAT ISSUES ARE ADDRESSED IN A PRENUPTIAL AGREEMENT?

Issues often addressed are as follows:

- Premarital real estate
- Premarital financial accounts
- Personal items owned prior to marriage
- Business interests established prior to marriage
- Income during marriage
- Expenses during marriage
- What happens to property in the event of either person's death
- Debts incurred prior to marriage
- Debts incurred after marriage
- Inheritance funds and property

WHAT IS A POST MARITAL AGREEMENT?

Post marital agreements (agreements that are entered into after marriage) can generally address the same issues as prenuptial agreements. If they are properly written, and if procedures are properly followed, such agreements are generally enforceable. Such agreements, however, are not governed by the Uniform Premarital Agreement Act. Pursuant to Arizona law, the burden of proof for enforcing such agreements is more stringent than the burden of proof applicable in premarital agreements. ♡

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