



Insurance for your marriage, why you need a Premarital Agreement.

by Kimberly Pelkey Sdeo, Esq.

You have insurance on your car in case of an accident, you have medical insurance in case you get sick and homeowner's or renter's insurance to protect your home and belongings.

Do you own a home? Do you have a pension, retirement savings? Are you expecting a large inheritance when a family member passes away? Do you own your own business? Do you have investments or securities? Are you expecting a large gift towards the down payment of a new home? Do you have children from a prior relationship? Do you care for a dependent family member? Does your fiancé have substantial debts? Are either you or your fiancé planning on going back to school?

If you answered yes to any of these, you should consider insuring your marriage with a premarital agreement to protect your rights and property.

Getting married is an exciting and emotional time. It's also a time to evaluate your personal financial circumstances and determine how those will change after you say "I do." You've worked hard to get where you are today, now is the time to protect that hard work and protect your interests and assets. Premarital agreements help you to protect your rights and your property.

Now what can a premarital agreement do for you?

In New Jersey, premarital agreements are governed by statute. In 1988, New Jersey enacted the Uniform Premarital Agreement Act, which was amended in 2006 to acknowledge civil unions and renamed the Uniform Premarital and Pre-Civil Union Agreement Act. N.J.S.A. §37:2-31 et seq. The statute requires the Agreement to be in writing, signed by both

parties with a full disclosure of assets and liabilities to be enforceable. N.J.S.A. §37:2-33.

So long as the agreement contains those basic elements, the parties can draft their premarital agreement to include as much or as little as they would like. However, there are a few areas that are off limits if you want your agreement to be enforceable. Parties cannot assign away their rights to the support of existing or future children. N.J.S.A. §37:2-34. This is due to the public policy that child support is the right of the child and not the parents. You also cannot leave your spouse without a means to support himself or herself, he or she must be able to at least maintain the standard of living enjoyed before the marriage. N.J.S.A. §37:2-32. As with any contract, the terms are void if the contract contains illegal or unconscionable provisions. Terms of a premarital agreement will be void if (a) the execution of the agreement was involuntary; (b) the agreement was unconscionable; (c) prior to execution the party was not provided full financial disclosure and did not waive that right; (d) did not have knowledge of the other party's assets and financial obligations; (e) did not have an opportunity to review the agreement with independent legal counsel. N.J.S.A. §37:2-38.

Nick and Jessica

In New Jersey, property acquired before a marriage is called premarital property. This remains that party's separate property unless it is commingled after the marriage.

Nick and Jessica met at a speed dating event and they hit it off. Now six months later, they are getting married. Jessica is busy picking out bridesmaids dresses and finding the

perfect veil. Nick is occupied planning his Bachelor Party weekend in Vegas.

Jessica owns a house, which she bought five years ago for \$250,000 and put down a \$50,000 down payment to purchase the property. Jessica and Nick have agreed to live together in Jessica's house after the wedding. Both Nick and Jessica work and contribute towards the mortgage. During the marriage they renovate the house to suit their joint needs. Nick finishes the basement to create a man-cave to watch Sunday football games and Jessica turns the extra bedroom into her personal yoga studio. Five years after the wedding Nick and Jessica divorce. The property is now worth \$300,000 and the mortgage is \$125,000. Regardless of whether Nick was ever added to the Deed as a named owner of the property, he has a marital interest in the equitable distribution of the house. This means that Jessica owes to Nick one-half the net equity of the property. So Nick and Jessica divorce and Jessica must pay Nick \$87,500. She is now faced with refinancing the property or selling a house she loves to get the cash.

If Jessica had a premarital agreement, she could avoid this problem. Jessica could use the premarital agreement to protect her house. In the event of a later separation, the house would remain Jessica's sole and separate property. The down payment she received as a gift or inheritance from a relative or worked hundreds of hours of overtime to save would remain hers. The increase in value of the property during the marriage could remain hers. If Jessica and Nick outgrow Jessica's house and purchase a bigger home, using the proceeds from the sale of Jessica's

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house for the down payment, Jessica can claim that portion of the new property as hers should the parties later separate.

Reese and Ryan

Reese and Ryan meet at work and fall in love. Reese is so head over heels she fails to notice Ryan's spending habits while planning their wedding. Reese thought Ryan was just spoiling her and jumped at the opportunity to have her dream wedding complete with a horse and carriage. After the wedding and the birth of their daughter, Reese went back to work and her career skyrocketed. She enjoys success she could never dream possible. Ryan stays home with their children and picks up the odd job here and there. Ryan turns to shopping online to comfort himself while Reese is off on her many business trips. Ten years after they said "I do," Reese and Ryan call it quits. It is only after they split that Reese learns of Ryan's credit card debt. What did he charge? Play dates for the kids, shopping the latest fashions for himself, Reese and the kids at exclusive boutiques, kitchen gadgets to satisfy his hobby as a home chef, utilities, their gym membership, you know for the bonus points. Handling finances was never Ryan's strong suit. He paid the minimum balance each month and continued to rack up the debt. Reese never asked questions, she was too busy with work to care and after all her inner fashionista loved that Ryan spoiled her with the latest Manolo Blahniks. She always paid her bills in full and assumed Ryan did the same. Now the parties are separating and faced with \$100,000 of debt.

Now the debts the parties' accumulated before they said "I do" remains theirs. Any debts acquired during the marriage may be marital debts. In this case, Ryan's purchases were for the household, Reese and their kids, which would be marital debt. Just like the

equitable distribution of assets, upon a divorce, there is also the equitable distribution of debts. So Reese could leave the marriage with great shoes and a huge credit card bill. Since Ryan hasn't worked full time since before their kids were born, he doesn't have the means to pay the credit cards on his own. In lieu of giving Ryan a piece of her pension, Reese absorbs the credit card debt through making monthly payments to Ryan. Since the payments are an ongoing equitable distribution obligation, Reese can't even discharge them in a bankruptcy.

If Reese had a premarital agreement and was savvy enough to discuss finances and see Ryan's habits before they tied the knot, she could have protected herself by stipulating that the debts in each party's name remain his or her sole and separate liability in the event of a separation.

Kelsey and Camille

Kelsey is a free lance film editor. While traveling to promote his talents, he meets Camille. Kelsey and Camille start dating and on their one year anniversary take a trip to Fiji where Kelsey proposes. Six months later Kelsey and Camille walk down the aisle. Kelsey is a quite a bit older than Camille and this is his third marriage. After their marriage, Kelsey's business takes off after receiving critical acclaim for editing the latest Kevin Smith endeavor. Kelsey receives calls morning, noon and night from interested clients. The business becomes so successful, he expands the corporation. After many years of success and the advice of his most trusted advisors, Kelsey and his fellow shareholders decide to take the company public. Kelsey spends the next several months meeting with advisors and preparing for the Stock IPO. He even gets invited to ring the opening bell on Wall Street. Kelsey returns home after ringing the opening bell to find Camille in bed with her Palates instructor. Kelsey is furious and marches straight to his attorney to file for divorce. Kelsey, eager to finalize the divorce, directs his attorney to send

Camille a settlement agreement. Camille's attorney replies stating she wants a piece of his business. Kelsey is furious and is not pleased when he learns from his attorney that her claim is legitimate. Now he's faced with footing the bill for a business valuation. How could he prevent this?

No one knows what the future holds, a tiny cupcake enterprise started out of a home kitchen could be the next Crumbs or Magnolia Bakery. As was the case with Kelsey, his small film editing business grew and expanded over the course of his marriage to Camille. Camille now has an equitable distribution claim to the business. Had Kelsey prepared a premarital agreement, he could carve out his business and its future growth as his sole and separate property. Kelsey must lay out the business and its financials prior to executing the premarital agreement, but Camille has the opportunity to review the documents before hand and make an informed decision about whether to waive her rights.

So there you have it, these are only a few instances where a little foresight could help to insure Jessica, Reese and Kelsey's marriages. You pay your annual car insurance premium and practice safe driving to protect yourself from rear ending someone at a red light, shouldn't you do the same for your marriage. A little planning and a frank discussion can save both time and money. Most importantly, a premarital agreement can protect what you have worked so hard to earn.

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Kimberly Pelkey Sdeo, Esq. concentrates in all areas of matrimonial and family law which includes cases involving divorce, custody of children, child support, visitation, domestic partnerships, preparation of property separation agreements, mediation and pre-nuptial agreements. Call Kimberly at 609-452-8411 ext. 201 to schedule your appointment.