

Who Needs A Prenuptial And Why?

Divorce is expensive for the rich who do not have prenuptials. It reportedly cost Revlon billionaire Ronald Perelman \$8 million when he divorced his first wife in 1983. Second wife, gossip columnist Claudia Cohen, went away for \$80 million in 1994. Perelman vowed never to marry again without a prenuptial agreement. When he married Democratic Party luminary Patricia Duff, in 1994, a prenuptial was part of the package.

Billionaire John Kluge is reported to have signed a prenuptial with his third wife, Patricia, which left her only the family home, some Virginia land and just under \$1 million per year in alimony when they parted in 1990. Kluge's \$7 billion fortune could generate that alimony payment in less than a day.

After their marriage in 1994, Microsoft founder Bill Gates reportedly had his wife sign a prenuptial, perhaps in consideration of the preservation of his company and its shareholders. Washington State, where Gates resides, is a community property state. In the event of divorce, absent a prenuptial agreement, half of Bill Gates 24% holdings in Microsoft could be in unfriendly hands.



Marla Maples reportedly refused to sign a prenuptial with Donald Trump, but finally did after their baby was born because Trump said no prenuptial, no marriage. According to reports, under her prenuptial she will receive no alimony in the event of a divorce. One has to wonder if this was Trump's way of keeping her in line. Remember tabloids spied her cozying up to her bodyguard last year.

A prenuptial agreement is simply a contract entered into by perspective spouses before mar-

riage, which determines the property rights of one or both of them in the event of divorce. Anyone who owns a significant amount of assets at the time of the marriage or expects to receive inheritance or gifts during the marriage, owns a family business, has children from a prior marriage, or has family heirlooms which they want to keep in their family should consider having a prenuptial agreement. In 1982, the Georgia Supreme Court in the landmark case of *Scherer v. Scherer*, 249 Ga. 635 (1982) defined the standard for enforceable prenuptial agreements.

First, the agreement must not have been obtained through fraud, duress or mistake or through misrepresentation or non-disclosure of material facts. The best way to avoid nullification of a prenuptial agreement on one of these grounds is to include a detailed disclosure of each party's assets in the agreement, as well as the facts and representations relied upon by the parties in entering into the agreement. Frequently financial statements and tax returns are attached to the agreement.

Both parties should have separate counsel. In 1985 Steven Spielberg married actress Amy Irving who is said to have signed

a prenuptial drawn up on a scrap of paper. Four years later Spielberg left her for actress Kate Capshaw. Irving went to Court arguing she wasn't represented by an attorney when she signed the prenuptial. The Judge apparently agreed, paving the way for her to receive half of everything Spielberg had earned during their brief marriage. Spielberg settled by giving her a cool \$100 million, \$25 million for each of their four years together.

A prenuptial agreement cannot be "unconscionable." Unconscionable contracts are ones which are completely oppressive, unfair and unfavorable to one side so that they "shock the conscience" of the court. Perhaps one such agreement was in the case of Armand Marciano and Patricia Guedja who reportedly signed a prenuptial in France in the 1970's waiving all claim to each other's estates. At the time, neither had any assets. But by the time of their divorce, Marciano and his brothers had co-founded Guess Jeans, a company which was reported to be worth at least \$500 million by 1992 and Armand was earning \$5 million a year. While living with Patricia and their five children in a Beverly Hills mansion, however, Armand decided he wanted to marry his young mistress. Had the prenuptial agreement been set aside, Patricia could have taken half of the value of his estate under California's community property laws. Armand, however, is said to have cleverly convinced her to arbitrate the case with a retired judge who ruled in Armand's favor and enforced an "unconscionable"

prenuptial. The case would probably have had a different result had it been tried in Georgia. Make sure your spouse receives something under a prenuptial agreement and inherits something if you die first.

The third and last prong of the test for enforceability of prenuptial agreements in Georgia is whether the facts and circumstances have changed since the Agreement was signed so as to make its enforcement unfair and unreasonable. The change in circumstances must have been unforeseeable at the time the agreement was entered. Increasing your spouse's share of the assets over time might make the agreement more equitable as where one spouse receives a larger percentage of the estate each year of the marriage. The press said Ivana and Donald Trump updated their prenuptial shortly before their divorce.

Other general caveats of prudent planning are to be careful about mixing premarital and post-marital assets. Co-mingling can be the kiss of death because if you cannot prove what was yours before the marriage, you can lose it in divorce court. If you put your spouse's name on property you owned before the marriage or inherited during the marriage, you could be creating the perception that you intended to gift part of this separate property to your spouse. Inevitably, this was the intent at the time title was transferred, but benevolence turns to malevolence when the marriage sours. Courts look unfavorably on one spouse trying to trace separate property through joint

accounts to try to preclude the other spouse from sharing in the estate.

Prenuptial agreements can address issues of property brought into the marriage as well as whether a spouse should share in the appreciation of the property which occurred during the marriage. These agreements can also address whether a spouse should receive alimony and how it is to be determined. Alimony is support for one spouse and is typically based on that party's needs and the other party's ability to pay. Prenuptial agreements in Georgia cannot limit what a child can expect to receive in child support because this right belongs to the child and cannot be contracted away by parents.

In conclusion, prenuptial agreements can be an effective legal tool to limit your liabilities in divorce court and protect premarital assets and a family business. You do not have to be a millionaire to have one, you only have to want to preserve and protect the assets you owned at the time of your marriage. **TAW**



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