

Phillips & Mille Co., L.P.A. ANTENUPTIAL AGREEMENTS

An Antenuptial Agreement, also referred to as Prenuptial Agreement, is an essential tool to protect a person's assets, property, and income prior to marriage so as to limit the issues if the parties eventually decide to terminate the marriage.

An Antenuptial Agreement is valid and enforceable if (1) the parties have entered into the agreement freely without fraud, duress, or overreaching, (2) both parties made full disclosure of their assets, or had full knowledge and understanding of the nature, value and extent of the prospective spouse's property, and (3) if the terms do not promote or encourage divorce or profiteering by divorce. As a result of these considerations much time and attention is taken into considering and preparing an Antenuptial Agreement. The parties must voluntarily agree not only to enter into the Antenuptial Agreement, but also to all of the terms of the agreement. To avoid this situation, it is recommended that both parties to the Antenuptial Agreement retain counsel to advise and assist with the preparation and execution of the Antenuptial Agreement. In addition, the parties should exchange financial documents, reflecting the nature and value of their financial accounts and assets. A summary sheet is attached to the Antenuptial Agreement to summarize the extent and value of each parties' assets.

An Antenuptial Agreement can be used to assist a party in protecting their assets in the event of a divorce. The Antenuptial Agreement contains a written record of the extent and value of the other's assets at the time of the agreement. An Antenuptial Agreement will usually contain provisions providing that the prospective spouse waives any right to the other party's property, including personal property, real estate, accounts, and/or investments. The Antenuptial Agreement can not only waive the right to the property, but can also be crafted to protect any appreciation, or proceeds from the sale of the assets protected by the Antenuptial Agreement. This can be very helpful in protecting a party's assets, as well as avoiding expensive arguments as to the distribution of property in a divorce.

In addition to the protection of property, an Antenuptial Agreement may protect a party from being required to pay spousal support in the event of a termination of the marriage. Additional language can be crafted providing for the waiver of any claim for payment of expenses or fees incurred by the prospective spouse in the divorce.

In addition to the protections of property, an Antenuptial Agreement can also be used for estate planning in the event that a party were to pass away during their marriage to the prospective spouse. The Antenuptial Agreement can provide that the prospective spouse waives any statutory rights to the other's estate, which include, but are not limited to the right to dower, the right to support, the right to remain in the family residence, the right to a motor vehicle, or the right to receive property, which is exempt from the estate, or to serve as the executor of the estate. This protection is very helpful for a party entering into a second marriage, who wish to ensure that their property passes to their children upon their death.

FOR INFORMATION: Heather R. Johnston and P. Lynn Seifert are the Domestic Relations attorneys with Phillips & Mille, Co. L.P.A., 440-243-2800. Contact them to discuss any concern you have as to ensuring your assets and rights are properly protected. <http://www.pmlawyers.com> There are no legal fees for discussing a litigation matter until the scope of the needed legal services has been discussed and established.