

Frequently Asked Questions about **Prenuptial Agreements**

A Premarital Agreement - also referred to as a “Prenuptial Agreement” or “Prenup” - is a legal contract entered into by prospective spouses that addresses financial matters during the marriage and in the event of separation or divorce. This FAQ explains the key aspects of prenuptial agreements.

What can a Prenuptial Agreement address?

A Prenup can address property ownership during the marriage, the division of property and debt in the event of a separation or divorce, spousal support waivers or obligations, and much more. Note: a Prenup cannot predetermine child custody or a child support amount.

When should the Prenuptial Agreement conversation start?

Prospective spouses want to engage in premarital legal counseling and discuss the Prenup option early. Although there is no statutory required deadline, the Prenup should be negotiated and signed long before final deposits are made and finishing touches are decided for the wedding.

Do both parties need to disclose their finances?

Yes. Each party must provide a fair and reasonable disclosure of their financial situation, including income, assets, and debts. Failure to disclose may threaten the Prenuptial Agreement’s enforceability.

Can a Prenuptial Agreement be challenged in court?

Yes. In North Carolina, a Prenup is not enforceable if it fails to adhere to the Uniform Premarital Agreement Act (N.C.G.S. Chapter 52B) - for example, if the agreement was not entered into voluntarily. Although South Carolina has not adopted the UPAA, the state’s statutes and caselaw provide for similar enforceability challenges.

What should I include in a Prenuptial Agreement?

A Prenup should address what is reserved as separate property and how marital property is created during the marriage. This can include income, bank accounts, investments, retirement accounts, business interests, real property, and more.

Is a Prenuptial Agreement right for me?

Prenuptial Agreements are for everyone! They can be especially useful for spouses desiring to build wealth, business owners, those entering a second or third marriage, and those with children from prior relationships.

Is it necessary to have an attorney?

While not legally required, it is strongly recommended that each party consult with their own independent legal counsel to ensure the agreement is voluntary, fair, and enforceable.

