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March 2015

The Premarital Agreement: An Important Document for Your Estate Plan

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Premarital agreements (also called prenuptial agreements) are usually not the first matter couples think about after getting engaged. Even when one partner may want to discuss the idea, they often worry about offending their future spouse by broaching this potentially sensitive topic. Premarital agreements, however, are incredibly important documents that can protect you, your family, and your spouse.

In the absence of a premarital agreement, state law governs the division of assets at death and in life. Sometimes this division may align with a couple's intentions; however, this is not always the case. A premarital agreement drafts around the state's default rules and allows couples to create the rules that they deem fair. Discussing the possibility of a premarital agreement helps couples set financial expectations for their future.

Premarital agreements are not just for couples with large differences in income or wealth. If one partner enters the relationship with significant debts, the agreement can ensure that the other partner is not stuck with half of the bill. They are important for second marriages where one or both partners bring their own child to the relationship. A premarital agreement can ensure that the children on both sides will be financially cared for in the event of divorce or death.

These agreements are also incredibly important if one partner owns a business. Frequently, business owners do not have enough liquid capital to cover their ex-spouse's share of the business and may be forced to sell a portion of their company to satisfy a court judgment. A premarital agreement can classify the business as a non-marital asset, may allow the business owner to pay the spouse's share

in installments, or any other permutation agreed to by the couple. These documents are incredibly flexible.

Although it is best to set the ground rules at the outset of the marriage, it is never too late to draft a similar document after tying the knot. Called post marital (or postnuptial) agreements, these documents are executed after marriage and can deal with the same issues as premarital agreements.

Premarital agreements must follow certain guidelines set by the state and the courts, or else they are unenforceable; it is best to have an attorney draft the agreement to ensure compliance with the requirements, and for each party to get their own attorney. If you, or a loved one, are considering a premarital or post marital agreement, please feel free to contact the attorneys of Johnson, Gasink & Baxter, LLP.



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About the Author:

Kelsey Ott has worked for JGB as a William and Mary Law School Extern for more than two years. This summer, Kelsey begins her career as an Attorney with JGB as our first Associate. Please help us welcome Kelsey to the practice.

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