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Prenuptial Agreements

A prenuptial agreement, known as a “Marital Property Agreement” under Wisconsin law but often called a “prenup”, is a legal contract between spouses-to-be that outlines how assets, property, debts, and other financial matters will be handled in the event of divorce or death.

Requirements

To be enforceable in Wisconsin, a prenup must meet the following requirements:

- **Written:** The agreement must be in writing and signed by both spouses-to-be
- **Signed voluntarily:** Both spouses-to-be must voluntarily enter into and sign the agreement
- **Full disclosure:** Both spouses-to-be must fully disclose their assets, income, and liabilities
- **Fair and equitable:** The agreement must be fair and equitable to both spouses-to-be at the time of signing and at the time of the divorce.

Content

Prenups in Wisconsin can cover multiple financial matters, such as property division, spousal support (alimony or maintenance), management of finances during marriage, and inheritance rights. They cannot address child custody or child support.

Property Division

In Wisconsin, the Marital Property Act says that after marriage, all income and property are owned equally by both spouses. The jointly owned property is called marital property. However, a prenup can change this rule. A prenup can specify which property will stay separate and which will be shared as marital property.

Additionally, in a typical Wisconsin divorce the law presumes that marital property will be split equally between the spouses. A prenup can set rules for dividing all property if the couple divorces. It can say whether the property will be split equally or in a different way that the couple agrees on.

Debt

Debts are considered part of the property division. A prenup can also decide who gets which debts in a divorce. Both spouses are usually responsible for debts from the marriage, no matter whose name is on the account or who made purchases using the credit card. But a prenup can set rules for dividing debts. For example, if one spouse has student loan debt, a prenup can say that the debt will stay the responsibility of that spouse after a divorce.

Spousal Support

Spousal support, also called alimony or maintenance, is money paid by one spouse to the other after a divorce or separation. In Wisconsin, judges look at several factors when deciding whether and how much to award in spousal support, including the number of years the couple were married, each spouse's income-earning abilities, and the standard of living during their marriage. See our article on [Maintenance](#).

Including spousal support in a prenup allows a couple to agree ahead of time on whether it will be paid, how much, and for how long.

Caution! Prenups can be overridden in Wisconsin if they leave one spouse unable to support themselves or force them to rely on public assistance.

Child Custody and Child Support

Child custody and child support cannot be predetermined in a prenup, as these issues are always determined based on the best interests of the child at the time of divorce or separation.

Death

Parties can agree in prenups to opt out of Wisconsin law regarding the rights of a surviving spouse. Some people want to do this, for example, if they have children from a first marriage. They want their property to go to their children. Without a prenup saying otherwise, a surviving spouse has certain rights under the law to inherit part of the estate.

Additional Considerations

- **Do we need separate attorneys to create a prenuptial agreement?**
 - It's not required by law, but it's a good idea for each person getting married to have their own attorney review the agreement. This helps make sure both people understand the terms and what they mean, and that their interests are protected.
- **Can a prenup be changed or revoked after marriage?**
 - Yes, prenups can be changed or revoked after marriage, but any changes must be made in writing and agreed upon by both spouses.
- **What happens if we don't have a prenup?**
 - Without a prenup, Wisconsin's marital property laws decide how assets and debts are divided in a divorce. Generally, this means that assets and debts are divided equally by the court.
- **Can a prenup be challenged in court?**

- Yes, a prenup can be challenged in court under certain circumstances, such as if one spouse can prove they were forced to sign it, if there wasn't full disclosure of assets and debts, or if the terms are extremely unfair.
- **Can we create a prenuptial agreement if we've already gotten married?**
 - Yes, you can create an agreement if you've already gotten married. In that case, it's called a postnuptial agreement, or "postnup".

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