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Prenuptial Agreements

What is a Prenuptial Agreement?

A Prenuptial Agreement (sometimes referred to as a “Prenup”) is a legal contract between two people who are planning to marry, designed to specify how money and property will be divided in the event of divorce, or if one of the parties were to die.

What is an Antenuptial Agreement?

That’s just another name for a Prenup Agreement. They are also sometimes called Premarital Agreements.

Who Needs a Prenup?

You may need a prenup if you’re planning a wedding, and you are in any of these situations:

- ✓ You have children from a prior marriage
- ✓ You already have money and property of your own
- ✓ You want your money and property to pass to your family (not necessarily to your fiancé)

Does a Prenup apply only to what happens if we divorce?

No. Most of the Prenup Agreements we handle address what happens in divorce, and also if one of the spouses were to die. Marriage is a major life event that affects how property will be inherited after death, so it’s very important to think through how your property should pass if that were to happen. For example, if you have children from a prior marriage, a prenup can be an important step in protecting them, if you were to pass away unexpectedly.

How does a Prenup help protect me?

If you have children from a prior marriage, a Prenup can ensure that your home and the investments you already have are not split up in the event of divorce, but stay with you. A Prenup can also help to ensure that your home and investments pass to your children (or whoever you want), and not necessarily to your new spouse, if you were to pass away.

So, does a Prenup take the place of my Will?

No. When you get married, it is very important that both of you get new Wills as soon as possible. A well written Prenup Agreement should work together with your Will, to be sure that your wishes are carried out, and that your property passes to the people *you* choose.

Remember, without a Will, state law will determine who receives your money and property, and a Court will choose someone to settle your estate. In Georgia, if you die without a Will, your spouse gets at least 1/3 of your assets, and also may receive additional funds to provide support for a one-year period after your death. So, a large portion of your estate may go to your spouse, even if he or she doesn’t need the funds, and even if you had intended for this money to go to your children or other beneficiaries. With a good Prenup and Will in place, you can be sure that you (not state law) decide where your assets go.

If my fiancé’s attorney is drafting the Prenup, do I need a lawyer too?

Yes. It is very important that both of you be represented by separate, independent attorneys. This is a key factor in making the agreement legally enforceable - to show that it was fairly written and that both of you understand the meaning of the agreement.

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*Baker Law Group, LLC ♦ Attorneys at Law ♦ 555 Sun Valley Drive ♦ Suite N-4 ♦ Roswell, GA 30076
Phone (770) 992-4325 ♦ Fax (770) 992-4367 ♦ www.bakerlg.com*