

WHY SHOULD A BUSINESS OWNER CONSIDER A PRENUPTIAL AGREEMENT

Many people don't like to discuss divorce when they are thinking of living happily ever after. Finances is one of the main reasons for divorce, so think of the discussion as something that needs to happen prior to marriage as part of your insurance policy toward a good marriage.

One of the requirements of a Prenuptial Agreement is "Full Disclosure". What does this mean? It means both of you put on paper a summary of your assets and liabilities and give this written, sworn summary to each other. This is a good beginning to any marriage. Full knowledge of where you are at right now. This will allow you each to show each other your strengths and weaknesses. It further allows you to discuss and goal plan together toward a mutually successful result. It also allows you to discuss your weaknesses and what will happen if this marriage is not successful and results in divorce. How will you compensate the spouse if you mutually decide that one of you will stay home with the kids.

Don't look at an Antenuptial Agreement as a tool of distrust, but as an insurance policy toward successfully getting through the tough years. Many of my clients have devised a different result based on the number of years of marriage. If married less than one year, maybe each of you walk away with what you came into the marriage with. Married more than one year, but less than 5 years, you may decided to have a different property split and payment, or non-payment, of alimony then. And if you are married 10 or 20 years, a different property split.

The Antenuptial Agreement must be in writing, witnessed by 2 people and notarized. It must have attached a true, full and accurate statement of your net worth, which includes your assets and your debt. Each party is encouraged to have their own attorney review the split and know what they would be entitled to. You may want to include in your Agreement, a marital plan of payment of debts, and how new assets such as your marital home will be titled. I also encourage you to name your insurance policies and if you will name each other as beneficiary or name another beneficiary such as your children.

In most cases, courts will hold up the agreement as long as there is Full Disclosure. In Ohio, if a party can show there was not a full disclosure, the court will likely deem the Prenuptial Agreement null and void and will decide the case as if there was not a Prenuptial Agreement ever made. As with any court case, written documentation is your strongest evidence. I recommend that you further copy the statements and have them available for review and in your attorney's file to back up that you have made a Full Disclosure.

In Summary, all marriages should begin with honesty and sharing, and entering into an Antenuptial Agreement, especially if you have significant assets, children prior to this marriage, or a business to run, just ensures that you are discussing with each other your major issues and beliefs. An Antenuptial Agreement can ensure that your marriage begins in a way that you will never have to enforce the Agreement in court, but will be able to live your marriage in full until death do you part.