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Premarital Agreements

By: Lisa Rosenberg Moore, Esquire

The New Jersey Premarital Agreement Act outlines statutory requirements for premarital agreements¹. A premarital agreement may address and therefore control support issues and property distribution upon the termination of a marriage either by divorce or death. In the absence of an agreement the alimony and equitable distribution statutes apply².

Generally, the premarital agreement statute requires: (1) Full disclosure of earnings, assets and financial obligations; (2) The Agreement must be executed voluntarily; (3) The Agreement must be entered into by both parties with the assistance of independent counsel or a written waiver. The Agreement must not be unconscionable at the time enforcement is sought because an Agreement must be fair to be enforced by the New Jersey Courts.

The longer the term of the marriage, the more likely the Court will set aside the premarital agreement, particularly when it is unbalanced, leaving one party in a superior financial position. The party seeking to set aside the Agreement bears the burden of justifying why it should be set aside. Your attorney cannot guarantee that the premarital agreement will be enforced at the time enforcement is sought, due to the unconscionability standard and, in many circumstances, due to the limited timeframe the other party has had to review the Agreement, prior to the wedding ceremony. At the very least, the premarital agreement illustrates the parties' intentions at the outset of the marriage.

As stated, the agreement can be set aside if it is unconscionable at the time it is to be enforced. The statute specifically defines unconscionability as "either due to a lack of





property or unemployability (1) which would render a spouse without a means of reasonable support; (2) which would make a spouse a public charge; or (3) which would provide a standard of living far below that which was enjoyed during the marriage³.

There are statutes that provide for a party the rights to inherit from his/her spouse, and depend upon the State where the deceased party resided at his/her death. Parties may seek to

modify the statutory provisions through a premarital agreement.

Premarital Agreements are no longer exclusively for the rich and famous. Many people now marry later in life after accumulating assets. Some people marry more than once. Children may have been born from prior relationships. Premarital agreements are widely used as a planning tool in recognition of the reality and evolution of the modern day marriage.

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