

Lindstrom Estate & Trust

PRE-NUPTIAL AGREEMENTS a/k/a ANTENUPTIAL AGREEMENTS

As far as Pre-nuptial (Antenuptial) Agreements go, "*It is best to agree during a time of harmony and unity as opposed to a time acrimony.*" Pre-nuptial Agreements do not have to be, and should not be, a negative or controversial issue. Each party is simply retaining the ability to determine certain rights with respect to their assets which may include leaving all of your assets to your spouse. It should not be thought of as a way to disinherit a spouse or to create an adversarial situation. It is a way to agree on certain items now that may not be so easy to agree on at some later point in time.

Ideally, everyone would have a pre-nuptial agreement, marriages would not end in dissolution, each party would leave their assets in a manner desired by both spouses, and the children of each party (whether the children are common to both spouses or whether there are children of prior marriages or relationships) would be treated "fairly" by both spouses regardless of which spouse passes first.

PRE-NUPTIALS FOR ESTATE PLANNING

Generally, people think of pre-nuptial agreements in the context of a marriage dissolution. However, they also apply to the passing of assets upon the death of one spouse while the parties are married. Often times, a pre-nuptial agreement can be even more important in the context of a death in that the deceased spouse desires that their assets pass to their children in a specific manner especially when such children are not the children of both spouses. Accordingly, a pre-nuptial agreement is crucial.

With respect to pre-nuptial agreements in general, why not agree to asset distribution when there is harmony and agreement between the parties? It is better to agree on how assets will be divided, especially assets that are brought into the marriage or inherited, at a time when there is agreement between the parties. This also applies to the desire of each spouse to distribute assets that they brought into the marriage or were received by inheritance or gift. Typically, if a couple has children that are common to both of them, such couple would want to have assets pass to their surviving spouse and then on to their children. However, the parties might also desire to leave a portion of their assets directly to their children upon the death of one party. In the context of a dissolution of marriage, the parties might want to ensure that they retain the assets that they brought into the marriage or that they acquired by inheritance or gift. In order to maintain the flexibility to retain certain assets in the event of dissolution or to pass assets in any manner desired upon death, a pre-nuptial agreement is necessary.

MINNESOTA LAW

In Minnesota, the proper execution of a Pre-Nuptial / Antenuptial Agreement is governed by Statute and accompanying case law. The agreement needs to be properly written, signed, witnessed, and notarized. In addition to certain other requirements, each party must provide a full and fair disclosure of their income and assets and each party must be given the opportunity to consult with legal counsel of their own choosing. **The agreement needs to be fully executed prior to marriage** and, ideally, not immediately before the marriage.

CONTACT LEGAL COUNSEL

If you are contemplating a marriage, and certainly if you are bringing significant assets into the marriage or have children from a prior relationship or marriage, it would be advisable to consult with legal counsel for preparation of a pre-nuptial agreement. Such agreement can generally ensure that you are in a position to make decisions regarding your assets during marriage, in the event of a dissolution, or upon a death that you would not be able to accomplish without such agreement. As with most other legal planning, a little expense incurred prior to marriage could save one or both parties from significantly higher expenses and other issues down the road.