

ADDITIONS TO THE COUPLE TO-DO LIST

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Couples about to marry have a long list of to-dos. Thinking about a Premarital Agreement before the marriage and a Last Will and Testament after the marriage are worthwhile additions to the list.

Premarital Agreements

Premarital Agreements have become increasingly popular for several reasons. First, more couples marry later in life. Second, more individuals enter marriage with assets. And, third, more people marry multiple times with children from prior marriages. Individuals utilizing Premarital Agreements have decided on the front end of the marriage about property and support issues, instead of relying on North Carolina law if the marriage ends.

A Premarital Agreement (“Agreement”) is simply a contract entered into before two people marry. The Agreement sets out what property and support the parties will be entitled to if they divorce or one or the other of them dies while in the marriage. Premarital agreements are enforceable contracts in North Carolina if the provisions of the Uniform Premarital Agreement Act (UPAA) are observed. The UPAA has been adopted in North Carolina.

Generally, the Agreement needs to be in writing and signed by the two parties to the Agreement. It is recommended that the parties sign the Agreement in the presence of two disinterested witnesses (i.e. those not receiving anything in the Agreement) and a notary public. For the Agreement to be valid, the parties must enter into the Agreement honestly and without deception. This specifically means that before entering the Agreement, both parties make a full and accurate disclosure to each other about their income, assets, and liabilities, among other things. If one of the parties fails to provide this fair and reasonable disclosure, the Agreement can be deemed invalid under the UPAA.

Under the UPAA the parties may contract about many things including (1) rights to share or not share in property either or both own; (2) rights to use, buy, sell, mortgage, manage or control property; (3) disposition of property upon separation, divorce, or death; (4) modification or elimination of spousal support; (5) making of a will, trust, or other agreement to carry out the Agreement; and (6) death benefit from life insurance policy. Any subject listed in the UPAA, and any matter not in violation of public policy may be included in the Agreement.

Getting That Will Done

After a couple marries, obtaining a Last Will and Testament (“Will”) is the last thing on their busy agendas. Young couples without children may even believe it is unnecessary. However, if a person dies without a Will, North Carolina law sets out who will receive the person’s property, and it does not all necessarily go to the spouse. At a minimum, couples need a relatively basic Will leaving all property initially to the surviving spouse. Further, as part of the overall estate plan, the new spouses need to make sure life insurance beneficiaries, 401(k) beneficiaries, IRA beneficiaries, and retirement plan beneficiaries have been changed to reflect the spouse as the beneficiary of these contracts.

Both a Premarital Agreement and a Last Will and Testament are about being prepared for the future. Couples entering into Premarital Agreements make decisions about property and support issues before their marriage. Couples creating an estate plan after they marry are providing for each other in the event of death. Both are important considerations for being fully prepared for the future.