

Prenuptial Agreement

- This is an agreement that determines what will happen in the even of death or dissolution of the marriage.
- This can include the following rights:
 - Rights of each party to any specific property already owned by each party
 - Rights to acquire or use property during the marriage
 - Disposition of property when the marriage ends
 - Spousal support upon dissolution
 - Provisions that must be in each spouse's will or trust
 - Directions that each party must have life insurance
 - Choice of Law and Venue

Prenuptial Agreement - Things to Keep in Mind

- Prenuptial agreements must be in writing to be binding
- Each side must have the opportunity to consult with a lawyer of his or her own choosing
- There are separate schedules where the bride and groom each list all of their property
 - This should be as close to exact as possible. If a party significantly underreports property ownership, that could nullify the agreement.
 - Many courts will not enforce a provision that limits child support, because child support is based on the best interests of the child, not the parent.

The Separation Agreement 1

- This is often, but need not be, a prelude to a divorce. This type of any agreement can also serve as a divorce agreement.
- It should include, at a minimum:
 - Information about both parties and any children
 - Inventory of all property owned by both parties
 - A clause expressing the agreement to separate
 - Contemplation of divorce is generally not a good idea in a separation agreement
 - Reference to prenuptial agreement, if any
 - This is important because to the extent that either party waives rights under a pre-nuptial agreement, it should be done expressly
 - Financial statements of both parties
 - To make sure all parties know what they're agreeing to

The Separation Agreement 2

- Agreement for alimony payments
 - If this is not provided, the UMDA allows the court to set the amount in some cases
- Agreement for child support payments
 - A court will not honor this agreement if these payments are unreasonably low
- Insurance (health and life) agreements between the parties
 - E.g., whether each spouse will maintain a life insurance policy with the other as the beneficiary
- Property Division
 - This should include reference to non-marital property even if that isn't being divided at all between the spouses

The Separation Agreement 3

- Child custody
 - Usually, some sort of shared custody agreement is the norm; it's not clear that a court would enforce an agreement shutting out one parent unless it's in the best interest of the child
- Child support clause
 - Again, a court has a lot of discretion to alter this later on, so make sure it's reasonable and has a solid basis!
- Each party's responsibility for marital debts
- Agreement how each party will leave property in his/her Will (e.g., to protect against children from other marriages)
- Provision for potential modifications later on

Types of Divorce to be Aware of

- Contested and uncontested
- Default: Where the “respondent” spouse does not show up to contest the divorce
- *Ex Parte*: This can apply where the court has jurisdiction over the marriage, but not both parties
 - The court will not be able to do much from a financial stand point against the other spouse, though it can dissolve the marriage
- Migratory
 - Both spouses travel to another state where divorce is easier
- Foreign
 - Another state or country granted the divorce that one spouse is now trying to enforce in this state

QUIZ TIME!

The Divorce Complaint

- This is similar to a civil complaint. It should contain:
 - A caption
 - Identification of the parties, children involved, etc.
 - Grounds for jurisdiction over the marriage
 - This is often more complex than in other civil cases'
 - Details of the marriage and a basic history
 - A separate “cause of action” for each ground for divorce that is alleged
 - A separate section laying the grounds for and asking for alimony
 - Same for child support
 - Request for relief, including dissolution of the marriage, property division, alimony, child support, other relief requested (if any)

Other Divorce Procedure Issues

- The answer is similar to a civil answer. It should also lay out the grounds for divorce alleged by the defendant, if any (this could help when it comes to determining the distribution of the marital property).
- Many states allow a “simplified” divorce complaint and proceeding where there are no children involved, both parties consent and there are no major property division issues.
- A divorce judgment dissolved the marriage and sets alimony, child support, etc.
 - It is generally prepared by the court or the clerk of the judge presiding over the case.