



**Amaral & Associates, P. C.**

ATTORNEYS AT LAW

## **Prenuptial Agreements in Massachusetts**

### **Q: What is a Prenuptial Agreement?**

A: A Prenuptial Agreement is a contract between an engaged couple who is planning to marry, in which the contract, divides all (or some) of each individual's property in the event of divorce and/or death. It can also determine whether any alimony will be paid in the event of a separation or divorce.

### **Q: Who needs a Prenuptial Agreement?**

A: Anyone who is getting married and you have any assets that he/she wants to protect, even if it is just one asset, needs a Prenuptial Agreement.

### **Q: What are some common terms included in a Prenuptial Agreement?**

A: A Prenuptial Agreement can be drafted:

- To protect a substantial inheritance or an interest in a trust;
- To protect an interest in a business;
- To provide for children from a previous relationship;
- To protect against a large disparity in assets or income between the two parties;
- To protect or segregate a specific asset;
- Your family is prone to divorces, and you would like the agreement "just in case";
- To address whether your future spouse will inherit from your estate;
- To decide how to split assets obtained before the marriage;
- To determine whether there will be alimony in the event of a divorce; and
- To determine who will be responsible for debts incurred by each party prior to the marriage.

### **Q: I'm not super rich. Do I still need a Prenuptial Agreement?**

A: If you have any assets, or even a single asset (e.g. house, retirement account, etc.) you want to protect in case of a divorce, it is a good idea to have a Prenuptial Agreement

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**Q: Are there any legal requirements for a Prenuptial Agreement?**

A: Yes, the Massachusetts Supreme Judicial Court case *DeMatteo v. DeMatteo* outlines what is required for a Massachusetts prenuptial agreement to be legal.

First, the agreement must be fair and reasonable at the time of execution. Secondly, the agreement must be fair and reasonable at the time of entry of the judgment of divorce nisi.

Massachusetts law also requires that a couple to a prenuptial agreement make a full and truthful disclosure of their respective assets and liabilities. This ensures that there are no secrets or surprises at the time the couple is married, and later if and when they divorce.

**Q: Do I have to have an attorney when I enter into a Prenuptial Agreement?**

A: No one is required to have an attorney when entering into a Prenuptial Agreement, but if both spouses do not have an attorney, it can create headaches down the road, and can be a grounds for invalidating the Prenuptial Agreement during a divorce.

**Q: Can a Prenuptial Agreement be modified in the future?**

A: Yes, as long as the original Prenuptial Agreement states that the Prenuptial Agreement can be modified in the future (and it usually does), the agreement can be modified in the future?

**Q: Can a Prenuptial Agreement include terms about child support and custody?**

A: The short answer is no. You can reference that you and your spouse-to-be will provide for your future children, but you cannot contract away rights regarding your children in a prenuptial agreement.

**Q: Am I guaranteed that a Prenuptial Agreement will be enforceable if I ever divorce?**

A: There is never a guarantee that your Prenuptial Agreement will be enforced in a future divorce action, but having competent attorneys on both sides assist you in drafting the Prenuptial Agreement is one of the ways you can work to guard against the agreement being invalidated in a divorce action.

*Have any further questions about prenuptial agreements?*

*Call the attorneys at Amaral & Associates, P.C.*