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PREMARITAL & COHABITATION AGREEMENTS

A premarital agreement or antenuptial agreement may be used by a couple to determine, prior to marriage, each party's rights and obligations in the event of divorce.

Premarital Agreements are governed by the Uniform Premarital Agreement Act, N.J.S.A. 37:2-31 et seq. The agreement must be in writing and have a statement of assets attached to it. It becomes effective upon the marriage of the parties.

The parties to a premarital agreement may enter into agreements about the following:

1. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located
2. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property
3. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event
4. The modification or elimination of spousal support
5. The making of a will, trust, or other arrangement to carry out the provisions of the agreement
6. The ownership rights in and disposition of the death benefit from a life insurance policy
7. The choice of law governing the construction of the agreement
8. Any other matter, including their personal rights and obligations, not in violation of public policy

However, a premarital agreement cannot predetermine issues relating to children including child support, custody or parenting time. As to enforcement of premarital agreements, there is a three-pronged test that must be addressed by a court if the agreement is challenged:

1. Was the agreement entered into voluntarily?
2. Did the parties have the opportunity to have the agreement reviewed by counsel of his/her own choosing?
3. Was there full disclosure as all assets, liabilities and income?

If these three items can be shown, then the burden to set aside the agreement shifts to the other side (with a higher burden of proof) and the primary focus will be on whether the agreement was "unconscionable" at time of enforcement, which shall be determined by the court as a matter of law.