

HEALY, FISKE, RICHMOND & MATTHEW, LLP
ATTORNEYS AT LAW
43 THORNDIKE STREET
CAMBRIDGE, MASSACHUSETTS 02141-1279
TEL: (617) 354-7133
FAX: (617) 354-5830
www.hfrmlaw.com
www.mediate.com/fiske

A PreMarital Agreement Checklist

Purpose

To help couples getting married define certain financial terms for their marriage in a legally enforceable manner. (You can of course have other agreements; this outline focuses on the typical financial one.)

Three Essentials Points, and WHY?

1. You should allow enough time before the wedding to create this Agreement.
2. You need to exchange complete financial information before agreeing to the terms of your Agreement.
3. You each need to have your own independent lawyer advising you.

WHY?

If you ever want this Agreement to be legally binding, as in defining the terms of a divorce agreement, the court will want to know you entered into your Premarital Agreement “without fraud or duress.” The court will be favorably impressed by your following the three essential points.

Possible Subjects to Cover in Your Premarital Agreement

1. Purpose of Agreement
2. Length of time before wedding
3. Total disclosure of financial information

Spouse #1 lists all his or her assets and liabilities and income. This document should be attached to the Agreement as Appendix A. A copy of his or her federal income tax return for the prior year could be provided to Spouse #2 and could also be attached to the Agreement, depending on what you want.

Spouse #2 does the same and attaches his or her list to the Agreement as Appendix B. The same comment applies about the federal income tax return.

4. Definition of separate property of Spouse #1

Refers to Appendix A

Usually says that all separate property of Spouse #1 shall always remain his or her separate property. Usually says all growth in value of this property during the marriage shall also remain his or her separate property. Some folks prefer that this growth during the marriage is treated as joint property to be divided equally or in some other way in event of divorce. Often says property given to Spouse #1 or inherited by him or her is separate property. Often says property acquired by Spouse #1 with his or her separate property shall also remain his or her separate property.

Length of Agreement

- Defined period
- Unilateral right to terminate and mutual right to extend
- Mediate before terminating?

The Children (usually they are not mentioned, but you can if you want)

- Legal custody (who makes major decisions about them)
- Parenting plan
 - Where they live
 - When you each get to be with them
 - Holidays etc, if any, and other particular issues

Financial Issues (after FULL disclosure of information, tax returns etc.)

- Who pays the bills
- Does one pay money to the other, weekly, monthly or otherwise
- How deal with extraordinary expenses
- All insurances usually stay in place

Property

- Freezing assets: no sale or changing assets without consent
- Ordinary investing and other asset management continues
- The person moving out may take agreed upon belongings

Our Separation

- Who moves out
- Can he or she come back to the house, and when
- Are we allowed to date
- Other aspects of the separation we want to define

Using mediation to resolve future disputes if we can't do it by ourselves

Counseling to help us in deciding whether to stay married or just in improving our communication in the future

Other Terms You Want

John A. Fiske

2016