

Understanding Premarital, Postmarital, and Cohabitation Agreements: How Family Law Contracts Can Serve Your Needs

Many people are familiar with premarital agreements, however, there are a variety of family law agreements that can be uniquely tailored to fit an individual's needs outside of a litigation context. These agreements are considered legally binding contracts and are interpreted based on Florida's contract law. The purpose of these agreements is to define the rights and obligations of an individual during and after marriage or cohabitation.

Premarital Agreements

A premarital agreement, also referred to as prenuptial or antenuptial agreement, is considered a marital contract. If a premarital agreement is entered into prior to marriage, it can define the rights and obligations of a couple as it relates to their impending marriage. Premarital agreements are great tools for providing clarity and ensuring both individuals are on the same page as to how marriage will affect their individual financial rights and obligations.

In Florida, premarital agreements are specifically governed by the Florida Statutes. This means there are specific requirements that must be met for a premarital agreement to be legally enforceable. These requirements relate to how an agreement is presented by one prospective spouse to the other prospective spouse, the type of financial disclosure which must occur prior to the signing of an agreement, and issues that may completely invalidate a premarital agreement including fraud, duress, coercion, overreaching, and other considerations.

It is also important for individuals desiring to enter into a premarital agreement to understand what rights and obligations a premarital agreement is permitted to address. Premarital agreements can be used to protect premarital assets, business interests, earnings, real property and much more, including specifically defining which property is to be considered "marital or nonmarital" during the relationship – such as earnings, retirement accounts, etc. Premarital agreements define rights and obligations in the event of divorce including the right to alimony, a division of marital property, and attorney's fees and costs. Premarital agreements can also establish or waive certain rights as it relates to the death of either spouse. A skilled family law attorney can work with an individual's estate planning attorney to ensure a premarital agreement and estate plan function in harmony.

Premarital Agreements should not include any terms which are considered a violation of Florida's Public Policy and cannot be enforced by a Court. For example, child support cannot be contracted away or specifically set in a premarital agreement, and a timesharing schedule cannot be predetermined in a premarital agreement because Florida's Public Policy has determined that child support is the right of a child and not a parent, and timesharing should be determined upon taking the best interests of the child into consideration

Postmarital Agreements

A postmarital agreement, also referred to as a postnuptial agreement, can address all the same issues as a premarital agreement but is entered into by two spouses at some point during their marriage. Various life circumstances may arise which make it desirable for spouses to more clearly define their rights and obligations in a legally binding contract after marriage.

Unlike premarital agreements, postmarital agreements are not governed by the Florida Statutes and rather are controlled by Florida case law. In terms of enforceability, postmarital agreements also have certain financial disclosure requirements and cannot be the product of fraud, duress, coercion, overreaching etc. but how these issues are defined vary slightly depending on individual circumstances and the most applicable case law to those circumstances. Postmarital agreements also must not violate Florida Public Policy.

Another consideration for individuals desiring to enter into a postmarital agreement is the handling of negotiations. Unlike premarital agreements, postmarital agreements are not negotiated at arm's length. It can be difficult for some individuals to communicate their desire to enter into a postnuptial agreement and why they want to enter into a postnuptial agreement to their spouse. This is why postmarital agreements require a more comprehensive financial disclosure than premarital agreements; and, also why the standard for analyzing enforceability is more stringent. It is important to work with an attorney who can handle these sensitive issues with the utmost care.

Cohabitation Agreements

As society has modernized, so have the tools under the law. Many couples are choosing to stay in long-term loving and committed relationships without being married, whether they have never been previously married or do not have the desire to remarry. In Florida, couples can enter into a cohabitation agreement to define their rights and obligations while living together and sharing a life with one another. This type of agreement can address issues like defining rights to property, how joint assets should be divided upon separation, and how expenses will be handled while the couple is living together.

In Florida, like premarital and postmarital agreements, cohabitation agreements are considered legally binding contracts. As the law does little to define the rights and obligations of unmarried couples, this type of agreement can be extremely helpful in stepping in where the law is not currently sufficient.

At Rossway Swan, our experienced family law attorneys can help prepare premarital, postmarital, and cohabitation agreements uniquely crafted to fit your individual needs. If you are considering entering into one of these agreements, please contact Bradley Rossway, Chelsea Miller, or Haley Davis to schedule a consultation.