

Memorandum

TO: LeBlanc & Young Clients

DATE: January 2022

SUBJECT: Premarital Agreements

A premarital agreement is an agreement that may be entered into by a couple prior to marriage (whether opposite sex or same sex), typically to address property rights in the event of death, separation, divorce, or annulment. The purpose of the premarital agreement is to set forth the understanding of the parties and allow them to change the expectancy that they may otherwise have under state law in their respective separate or joint property. This type of agreement, as well as the rights each person has in the other person's property as a result of marriage, are largely a function of state laws, which vary from one state to another. This memo is based on Maine law. The laws in other states will differ.

Spousal Property Rights Upon Death Without Premarital Agreement. Without a premarital agreement, upon the death of a resident spouse, the surviving spouse has an interest in the estate of the deceased spouse under Maine law. If the deceased spouse's estate provides for the surviving spouse in excess of the minimum requirements of Maine law, the surviving spouse will inherit what the predeceased spouse provided. If, however, the deceased spouse's estate does not provide sufficient assets for the surviving spouse, the surviving spouse has a right to proceed against the deceased spouse's estate. It is an intricate process, but in general, the surviving spouse may claim a portion of the deceased spouse's estate and assets, based upon the length of the marriage. The ultimate goal of Maine law is to provide the surviving spouse with what Maine law has determined is an appropriate share of the deceased spouse's assets.

Spousal Property Rights Upon Separation, Divorce or Annulment Without a Premarital Agreement. Without a premarital agreement, marital property may be divided upon separation, divorce or annulment, and spousal support may be awarded. Maine law categorizes property as separate property or marital property for married couples. Separate property is that property owned by an individual prior to marriage and property received during the marriage by gift or inheritance from another person. Marital property is property otherwise accumulated during a marriage, often, for example, through the work and investment efforts of the spouses. If an asset that would have been separate property is put into joint tenancy, it becomes marital property. Market increases or appreciation in value of separate property, however, retains its characterization as separate property unless one spouse devotes substantial time to produce the capital appreciation, as with a closely held business. Without a premarital agreement, marital property may be divided between spouses upon divorce, and separate property remains the property of the individual. The court can, however, take into account the separate property of each of the spouses in dividing the marital property. Further, the court can award spousal support if one spouse has been earning and supporting the couple disproportionately.

Effect of Premarital Agreement. A premarital agreement seeks to alter one or more of the property rights that arise by virtue of marriage. It is not uncommon for a premarital agreement to address both the division of assets upon divorce and the disposition of assets on death. One type of premarital agreement for couples, each of whom has substantial assets and/or other potential beneficiaries (for example, children from a prior relationship), provides that neither party has any rights in the property of the other upon death or divorce. Thus, if assets are not converted into joint property and a couple divorces, nothing is divided between them and the parties exit the marriage with the property they owned before marriage and any additional property that they accumulated during marriage. Further, upon death, the surviving spouse has waived all rights to proceed against the estate of the deceased spouse. Some premarital agreements only deal with division of assets upon divorce and do not limit rights of a surviving spouse on death, while others may be less concerned with divorce and focus on the rights of a surviving spouse at death. Other premarital agreements may deal with only one or two significant assets, for example a business or a real estate holding, about which one or both may have plans that should be reflected in the agreement. Of course, spouses can later override the baseline set by the premarital agreement by either converting property into joint property, which then will need to be divided upon divorce, or by providing for each other in their estate plans in a way that may exceed the requirements of the premarital agreement. Conversely, a premarital agreement can make significant provision for either or both of the spouses, particularly if, for example, a party makes changes or otherwise relies on important agreements or mutual representations. Often couples have discussions about what they intend before they seek legal counsel about this type of agreement. A critical component of making sure the premarital agreement is appropriate, fair, and thus legally enforceable, is for the parties to have it reflect any financial representations and changes they may have discussed and upon which they have relied in the process of determining that they are going to marry.

Validity of Premarital Agreement. Maine law has specific requirements for a premarital agreement to be legally enforceable. A critical element is disclosure of financial assets, resources and obligations. This is usually done with affidavits signed by each party that detail the approximate value of the assets and obligations. A formal appraisal is rarely needed for any assets disclosed on a premarital agreement. A premarital agreement must be entered into voluntarily by both parties and must not be unconscionable at the time. Typically, this is addressed by each party being represented by separate counsel, as each party might have different interests.

A premarital agreement should be done with plenty of lead time for discussion and cooperation. Most couples find that commencing the process early and having the agreement signed well in advance of the wedding minimizes the stress sometimes associated with these agreements. We would be delighted to guide you through this process and assist with the efficient implementation of an agreement well in advance of your celebration!