

## Memorandum

TO: LeBlanc & Young Clients

DATE: January 2022

SUBJECT: Premarital Agreements for First Marriages

Premarital agreements can be important for couples with a broad range of concerns. Many people associate marital agreements solely with older couples who have been married previously and have substantial assets, separate children and whose primary concern is to eliminate all spousal obligations in the event of a divorce or at death. In actuality, each agreement is unique and an agreement between an older couple with substantial assets and children often is very different from an agreement between a younger couple with few assets and no children. A younger couple who has not been married before typically wants to set out some basic concepts about separate property that might protect inheritances or family businesses but allow much latitude to build a marital estate that will be treated fairly and consistent with their expectations. Premarital agreements can help clients enter into a marriage knowing they can make future decisions during their marriage as they think best for themselves, their spouse and marriage confidently, because the agreement sets the parameters and control they wish to have apply to property rights through a premarital agreement. These agreements can help couples of any age gain certainty and clarity, and, in our mobile society, help avoid concerns that might otherwise arise as a result of the variation in marital property regimes in the various states.

A premarital agreement describes what will be marital property and what will be separate property in an approach that the couple understands and accepts. Under Maine law, couples can hold “marital property,” to be divided between them upon divorce, and “separate property,” that is not divided and remains the property of the original owner/spouse. While all states have rules that define what constitute separate versus marital property, those rules can vary greatly. Maine’s concepts are very fair and work well for most situations - in very general terms, property that is inherited or received as a gift by one spouse, or property that is owned before the marriage is separate property and will remain that spouse’s separate property as long as it is not retitled to become marital. Further, under Maine law, marital property is the property earned or created during a marriage, and it can be divided upon divorce, however it is titled. Yet in some states all property, however acquired, whether by inheritance, gift or owned before marriage is marital property to be divided in a divorce - this could include an interest in a family business, or investments that have been built or stewarded in a family for generations. Most people want to preserve the separate property characterization of inheritance, gifts and preexisting property as Maine law does and do not want to worry if they choose to move to a state that has a different marital property approach. Even within New England there is great variation, and the laws of one state can yield very different results from those of a neighboring state. Thus, it can be beneficial to use a premarital agreement to memorialize a couple’s agreement as to what constitutes separate and marital property so there are no surprises, regardless of where they may live, if they later divorce. As couples marry and subsequently move, this becomes more critical; couples

with a good premarital agreement can move wherever they like without hesitating because a particular state's laws are concerning.

A premarital agreement can serve to predetermine the retention and division of property upon divorce, as well as address the question of spousal support. A properly implemented agreement can protect a couple and their families from prolonged disputes in the event the marriage dissolves. The premarital agreements of many young couples do not disturb marital rights in property that is earned or created during the marriage, nor do they limit rights upon death in things other than family businesses or properties - they have a very narrow scope and are intended to preserve inheritances, gifts and family businesses as well as preexisting assets. An important and often misunderstood point about a premarital agreement is flexibility - the agreement allows each of the couple to retain rights in certain of their property and that right includes intentionally converting property that is separate to marital, making gifts of the property and leaving any property to a spouse in a will - thus the agreements are protective but not constraining.

Negotiating such terms well in advance of a wedding, while perhaps not everyone's ideal of wedding planning, is much more effective than addressing the same issues after a marriage has unraveled, when emotions are likely raw, and the law of the marital domicile may bring unwelcome and unintended consequences.