



## PRE- or POST-NUPTIAL AGREEMENT DISCUSSION CHECKLIST

---

This is intended as a guide to discussion of the possible terms that are commonly included in prenuptial agreements. **You do not need to include all terms in your agreement.** Where your agreement is silent, the default rules of Washington law will apply. (See the handout on Washington law you were given.)

FOR ANY PRENUPTIAL AGREEMENT TO BE ENFORCEABLE, EACH PARTY IS STRONGLY ADVISED TO CONSULT WITH SEPARATE LEGAL COUNSEL BEFORE SIGNING ANY PROPOSED AGREEMENT, FULL DISCLOSURE OF EACH PARTY'S ASSETS AND LIABILITIES SHOULD BE MADE, THE TERMS SHOULD BE NEGOTIATED AND DOCUMENTS SIGNED 30 DAYS OR MORE BEFORE THE WEDDING DATE, AND YOU SHOULD COMPLY WITH THE TERMS OF THE AGREEMENT THROUGHOUT YOUR MARRIAGE.

### FAMILY INFORMATION

Name of Husband: \_\_\_\_\_ Name of Wife: \_\_\_\_\_

Date of this marriage: \_\_\_\_\_

List any previous marriages for both spouses:

Husband:

Name	Date Married	Date Terminated	Terminated by
------	--------------	-----------------	---------------

Wife:

Name	Date Married	Date Terminated	Terminated by
------	--------------	-----------------	---------------

Is either party bound by a divorce settlement that controls disposition of property?

Yes       No.

If yes, explain:

List all children:

<u>Name</u>	<u>Age</u>	<u>Child of</u>	<u>Special Needs?</u>
-------------	------------	-----------------	-----------------------

Will existing minor children be adopted by other spouse?  Yes  No

Are more children planned?  Yes  No

Will both parties continue to work?  Yes  No

Will one party stay at home if there are minor children?  Yes  No Who?

Will one party go back to school?  Yes  No

Has each party made a full financial disclosure of all assets and liabilities to the other?

Yes  No

Estimated estate of H: \_\_\_\_\_ Liabilities of H: \_\_\_\_\_

Estimated estate of W: \_\_\_\_\_ Liabilities of W: \_\_\_\_\_

Annual income of H: \_\_\_\_\_ Annual income of W: \_\_\_\_\_

Are any changes anticipated for either? (ex. inheritance, retirement, promotion or other career changes)  Yes  No

If yes, explain:

### **DECISIONS ABOUT TREATMENT OF PROPERTY**

#### **DURING MARRIAGE:**

Current separate property (more detailed questions will be asked later in the interview)

remains separate  becomes community

Future separate property (ex. inheritance or gift)

remains separate  becomes community

Earnings:

Salary

remains separate  becomes community

Employee benefits (ex. IRA, 401(k), etc.)

remains separate       becomes community

Does nonparticipant spouse agree to give employee spouse full discretion to manage benefits, change beneficiaries?

Yes       No

Does either spouse own a SP business?    Yes       No

Must spouse pay him/herself a reasonable salary?    Yes       No

Other determination of salary to be paid: \_\_\_\_\_

How will you treat SP spent on CP (ex. paying off mortgage or paying for improvements)

lien       loan       gift       decide at the time

Treat improvements to property the same as reducing debt on the property?

Yes       No

If no,  lien       loan       gift       decide at the time

How will you treat CP spent on SP (ex. paying off mortgage or paying for improvements)

lien       loan       gift       decide at the time

Treat improvements the same as reducing debt on the property?

Yes       No

If no,  lien       loan       gift       decide at the time

Treat spouse's labor spent on other spouse's SP the same as money?

Yes       No

If no,  lien       loan       gift       decide at the time

Tangible personal property (TPP):

List any TPP that will remain SP of Wife

List any TPP that will remain SP of Husband

How will TPP acquired during marriage be treated?

What, if any assets, will be converted to CP now?

- None
  - All
  - Money placed in a joint account to be opened for this purpose
- Repeating contributions required?  Yes  No

Describe

- Bank account # \_\_\_\_\_ at \_\_\_\_\_
- Bank account # \_\_\_\_\_ at \_\_\_\_\_
- Bank account # \_\_\_\_\_ at \_\_\_\_\_
- Home currently owned by:  Husband  Wife  Both
- Real property located at \_\_\_\_\_ currently owned by:  Husband  Wife  Both
- Real property located at \_\_\_\_\_ currently owned by:  Husband  Wife  Both
- Automobile: Make \_\_\_\_\_ Model \_\_\_\_\_ Year \_\_\_\_\_  
Owned by  H  W  Both
- Automobile: Make \_\_\_\_\_ Model \_\_\_\_\_ Year \_\_\_\_\_  
Owned by  H  W  Both
- Automobile: Make \_\_\_\_\_ Model \_\_\_\_\_ Year \_\_\_\_\_  
Owned by  H  W  Both
- Retirement Account # \_\_\_\_\_ at \_\_\_\_\_ in name of  H  W
- Retirement Account # \_\_\_\_\_ at \_\_\_\_\_ in name of  H  W
- Retirement Account # \_\_\_\_\_ at \_\_\_\_\_ in name of  H  W
- Life insurance: Company \_\_\_\_\_ Policy # \_\_\_\_\_  
Insured  H  W  Both Amount \_\_\_\_\_  
Type \_\_\_\_\_ Owner  H  W  Both

- Life insurance: Company \_\_\_\_\_ Policy # \_\_\_\_\_  
Insured  H  W  Both Amount \_\_\_\_\_  
Type \_\_\_\_\_ Owner  H  W  Both
- Life insurance: Company \_\_\_\_\_ Policy # \_\_\_\_\_  
Insured  H  W  Both Amount \_\_\_\_\_  
Type \_\_\_\_\_ Owner  H  W  Both

Future conversions to CP:

- None
- On birth of child
- \_\_\_\_\_% on our \_\_\_\_\_ year anniversary
- \_\_\_\_\_% every \_\_\_\_\_ years
- \_\_\_\_\_% for every \_\_\_\_\_ year of care provided at home
- Other:

Conversion of liabilities to CP

- Credit card (list company and amount)
- Mortgage (list company and amount)
- Other:

Payment of routine living expenses

- Equally from each spouse's SP
- \_\_\_\_\_% from H \_\_\_\_\_% from W
- Other:
- From CP
- From specific joint account
- To be determined later

Income Tax

Filing status

- married filing jointly
- married filing separately
- mutually agreed each year
- most beneficial to  H  W

Tax savings from choice of filing status goes to

H  W  shared jointly

Treatment of capital gains from sale of SP

only CP if agreed in advance

Agree to split any gifts as long as it does not require use of lifetime credit

Yes  No

**ON DISSOLUTION OF MARRIAGE:**

Treatment of SP on dissolution:

each keeps their own

up to court

other

Treatment of CP on dissolution:

50/50

up to court

other

Is this different if there are children?  Yes  No

If children are below a certain age?  Yes  No

If the CP is below a certain value or percent of the SP?  Yes  No

If a spouse has provided care for the other for a period of time?  Yes  No

Spousal support  none (court may not uphold)

up to court

other

Will this differ if there are minor children?  Yes  No

Exception if party is disabled or unemployed?  Yes  No

Other exceptions?  Yes  No

NOTE: court may or may not uphold these provisions for spousal maintenance. Similarly, provisions regarding child custody or support are unlikely to be upheld by the court. (Court believes it has final authority to determine best interests of the children.)

Any options for survivor to purchase the residence?

Legal fees on separation:

- each to pay their own
- H to pay
- W to pay

**ON DISABILITY:**

Do you wish to include provisions regarding care if one spouse requires long-term care?

- No provisions
- Different settlement terms in case of “Medicaid divorce”
- Provisions for how care will be provided and compensation
- Preferences for residency

Will transfers of the ill spouse’s assets to the well spouse for Medicaid qualification purposes be allowed?

- Yes
- No

**ON DEATH:**

- No provisions in prenuptial agreement. We will handle this in our estate plan.
- Waive all usual spousal rights
  - To be appointed as PR for the first 40 days after death
  - To administer the community property
  - To receive a family allowance of up to 125k from deceased spouse’s property
  - To inherit all CP and 25 to 50% of the SP if there is no valid will
- Agree to contractual wills (i.e. one spouse can’t change without consent of the other)

Key Terms:

- Other

If home is not community property:

Option for survivor to purchase residence

Describe terms:

Survivor has exclusive right to occupy residence for

90 days

120 days

180 days

1 year

Lifetime

Other

Who is responsible for paying home bills (mortgage, etc.) during this time?

Estate

Surviving spouse

50/50

other

### **Status of This Agreement**

---

Agreement is

Permanent

Expires in \_\_\_\_\_ years

Expires upon an event: \_\_\_\_\_

To be revisited every \_\_\_\_\_ years