



Prenuptial and Postnuptial Agreements

The subject of "prenups" and "postnups" is not terribly sexy. Contract law can be somewhat dry. For those who are considering a prenup or postnup, it is necessary to deal with the dry details to better understand these agreements so as to better protect yourself.

Under Texas law, marriage is considered a contract, with Texas statutes providing the terms of the contract. Prenuptial and postnuptial agreements, however, allow more freedom by providing a way to modify the marriage contract. Prenuptial agreements are made before the date of the marriage and affirmed after the marriage by both husband and wife. Postnuptial agreements are made and must be affirmed after marriage by both husband and wife. Spouses should be free to contract and control the disposition of their property as they choose and a prenuptial agreement or postnuptial agreement can address almost any issue that might arise during the marriage or in the divorce context.

Prenuptial and postnuptial agreements cover many issues; however, the primary concern is usually property. Normally, Texas is a "community property" state—all real or personal property or assets acquired during the marriage is presumed to be the property of both spouses, regardless of whose name is on the title. In the event of divorce, community property is subject to the "just and right" division of the court. There is no 50% split rule in Texas. Division can be in any number of combinations—70/30, 80/20 or any other percentage split the judge deems appropriate. In a prenuptial or postnuptial agreement, you can make your own rules, and can even identify specifically which property belongs to which person.

A marital agreement will also help spouses avoid losing significant money in lawsuits if one or both of them are in a profession that is regularly subject to lawsuits. The agreement can serve as a shield for half of the assets owned by you and your spouse. This helps ensure that anyone suing you can never reach half of the estate owned by your spouse.

Prenuptial and postnuptial agreements do not have to be equal or fair. They do have to be in writing, however. The side giving up property rights must be represented by his or her own attorney. The agreement cannot be presented to the other side at the last minute or signed under duress. The person who wants the agreement must provide a fair and reasonable disclosure of the property or financial obligations to the other party. Most importantly, the agreement cannot be unconscionable or shockingly unfair.

Unconscionability is decided by the court as a matter of law. For example, in one Texas case, an unwed mother got pregnant. The father said he would

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marry her if she signed the prenuptial agreement. She signed. The court stated that although presented with a difficult choice, signing the agreement was not involuntary and, therefore, not unconscionable.

In another Texas case, the court set out factors that should be considered in determining unconscionability. In general, for a prenuptial agreement to be unconscionable, it must be so far one-sided that no reasonable person could consider it to be an arm's length transaction. Factors include: the maturity of the parties, prior marriages, respective ages and motivations to protect their respective children.

Texas prenuptial agreements and postnuptial agreements must strictly comply with Texas law. Any variation from the law may result in an agreement that is unenforceable. Our attorneys can advise you about the pros and cons of a marital agreement under your particular circumstances. We can negotiate the terms, review proposed agreements, draft an agreement on your behalf, or even help you and your spouse reach an agreement through collaborative processes. If necessary, we can also defend or attack a marital agreement in court. Whatever your goals, our team of family law attorneys can meet your needs.

Postnuptial Agreements

Postnuptial agreements are a little less well-known. The purpose of a postnuptial agreement is to identify those things that are making the relationship difficult, and to find a solution to the issue that will satisfy both spouses.

At any time after marriage, spouses may partition and exchange their community property, then existing or to be acquired, as the spouses may desire. The spouses may agree that the income or property arising from the separate property that is then owned by one of them or that may be acquired shall be the separate property of the owner. A postnuptial agreement does not require judicial approval, but the agreement must use specific language to accomplish these goals.

A postnuptial agreement can also be used to change a prenuptial agreement. So often relationships and circumstances of a marriage change. Postnuptial agreements allow for the prenuptial agreement to adapt and change with the relationship. A couple may want to combine all their property or separate all their property. Luckily, Texas allows for that change to occur.



What are some other uses of a postnuptial agreement?

- Create a safety net for both partners in case of death or divorce
- Payment or waiver of support after a separation or divorce
- Allocate expenses during the marriage
- Memorialize an agreement on property distribution
- Protect women who plan to take time off from their careers to stay home with their children

Cheating Spouse?

Should you spy on your cheating husband or wife? You believe you see signs of a cheating spouse. The need to know whether your spouse is cheating and exactly what kind of cheating is taking place is often strong, but there are some things that you need to be aware of before you start investigating your spouse.

Texas courts recognize the tort of willful invasion of privacy, which is a person's right to be left alone in his or her own affairs. The right of privacy extends to spouses. For example, there are both federal and state statutes in place to prevent wiretapping. The statutes prohibit interception of any wire, oral, or electronic communication by use of any electronic, mechanical or other device. 18 U.S.C. §2511. This includes transmissions via cell phone and email. Intercepting emails and recording phone calls can be more harmful in the end to you than your spouse. The consequences of violating state and federal wiretapping statutes include: imprisonment; injunctions prohibiting both further interceptions or attempts at interception; injunctions preventing divulgence or use of information obtained by interception; statutory damages of \$10,000 for each occurrence; all actual damages in excess of \$10,000; punitive damages in an amount determined by the court or jury; and reasonable attorney's fees and costs.

Further, the installation of tracking devices is prohibited by Texas Penal Code §16.06. The statute states: "a person commits an offense, if the person knowingly installs an electronic or mechanical tracking device on a motor vehicle owned or leased by another person." A tracking device is defined as, "a device capable of emitting an electronic frequency or other signal that may be used by a person to identify, monitor or record the location of another person or object." If you are the owner of the vehicle, however, you have the right to track the whereabouts of your vehicle. Basically, tracking someone without his or her knowledge can get you into trouble. Everyone is entitled to a reasonable expectation of privacy.

Emails present sticky situations, even on a joint internet account. Everyone has a reasonable expectation of privacy. This right extends to the third party who sends your spouse an email. Please consult an attorney before snooping in an email account—even if you have the password.

What Should You Do?

First and foremost, if you suspect your spouse of cheating, contact an attorney. An attorney can put you into touch with a trained, licensed private investigator who understands the limitations of the law. Even if you choose not to use a private investigator, an attorney can advise you of the law and your rights in the event your



suspicions are confirmed. Examples of a few things that do not violate the law include:

- Eavesdropping on a conversation and photographing a person without his or her permission is not actionable in court. Recording video that produces sound is in violation of federal and state wiretap statutes.
- In Texas there is no liability for a party *to a conversation* to tape or intercept that conversation. Therefore, you may record yourself and another person in a private conversation without his or her knowledge or consent.
- “A person has no legitimate expectation of privacy with information he voluntarily turns over to third parties.” Therefore, once a person discards his or her trash, you can look through it for incriminating evidence.
- Viewing a person’s text messages is not in violation of the Federal Wiretap Act. The only way to document the evidence for later use, however, is to photograph the message.

These lists are not exclusive. For a more in depth look at your situation and the options available to you, please contact M. Todd Allen.

Chamblee & Ryan, PC - Family Law Section

Family law matters present the most challenging and emotional problems people face. Few other areas of the law affect one’s children, business, property and future interests in such a profound way. Whether you are experiencing the joys of an adoption or the strain of a divorce, the impact is long-lasting.

The intimate nature of Family Law requires a collective knowledge. Our team of lawyers at Chamblee & Ryan has collectively well-over a hundred years of legal experience practicing in state and federal courts throughout Texas. Chamblee & Ryan has a proven history of diligently advocating for our clients with success. Our Family Law Section recognizes the importance of protecting the assets of our clients, while maintaining their most valued relationships with their children. We structure our approach to our clients’ cases utilizing traditional trial practices, in addition to alternative methods of mediation, negotiations and/or collaboration where appropriate.

Family law and family lawyers must be equipped to handle not only the issues of conservatorship and property, but the emotional fall-out that results from the disassembly of a partnership. We strive to meet the needs of our clients in each phase of their dispute, to include referrals where appropriate to counselors, certified public accountants and other professional support. We work with investigators, business property valuation experts, psychologists and others to give our clients the best representation.

We work in a positive environment that fosters creativity and ingenuity. The Family Law Section of Chamblee & Ryan, P.C. is positioned to address a variety of legal issues that so often surface during divorce, adoptions and modifications. Please contact M. Todd Allen for general inquiries or to set up an appointment at 214.905.2003. We look forward to serving all of your family law needs.



For more information regarding **Chamblee & Ryan’s** Family Law practice, please contact **M. Todd Allen** at 214-905-2003.