



GARRETT HEMANN ROBERTSON PC.

## **PREMARITAL AGREEMENTS (PART 1)**

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### **Worth a look?**

Anyone who has been through a divorce, or knows someone who has, understands that it can be a drawn-out, expensive and painful process. Typical divorce clients have entangled their finances in ways that make separation and division difficult, especially when two soon-to-be-former spouses find themselves at odds with each other emotionally. As a result, the parties often have trouble finding common ground in order to settle and move on with their post-divorce lives. One often-overlooked tool to make this process less painful is the premarital, or prenuptial agreement.

### **What are they?**

Premarital agreements are contracts between prospective spouses who are planning on getting married. Although the premarital agreement is a kind of contract, no consideration is required—that is, neither party has to “pay” anything to the other in order to make the agreement binding.

### **What topics can a premarital agreement address?**

Premarital Agreements are commonly used to address division of assets and spousal support in the event of a divorce. Oregon’s premarital statutes are broadly written to allow the parties to agree on just about anything, as long as the subject of that agreement does not violate either public policy (such as an agreement addressing payment of future child support) or a law that imposes a criminal penalty such as an agreement to steal a car.

For example, premarital agreements can be used to address:

- What to do with one spouse’s retirement account that the spouse brought into the marriage;
- How to deal with a spouse’s rental property;
- How to ensure that the parties can acquire jointly-owned property such as a marital residence when they are married;
- Whether, and to what extent, divorce should trigger mechanisms to support one of the spouses, either by providing or limiting spousal support, or by assigning an interest in income-producing assets to generate income for a spouse;
- How the surviving spouse should divide a deceased spouse’s assets;
- Whether to assign life insurance proceeds to the surviving spouse, the deceased spouse’s children, or to a previous spouse to ensure payment of a pre-existing obligation; and
- Any other matter, including personal rights and obligations, provided the agreement does not violate public policy or a statute imposing a criminal penalty.

### **When do they become effective?**

Premarital agreements become effective upon marriage.





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## **PREMARITAL AGREEMENTS (CONT.)**

### **Can premarital agreements be modified or revoked after marriage?**

Yes. If both spouses agree to modify or revoke their premarital agreement after they are married, they have to do so in writing, and both parties have to sign. No additional consideration is needed to modify or revoke the agreement.

### **Who else could benefit from a premarital agreement?**

Often, the parents of a spouse can benefit from a premarital agreement that ensures any inheritance left for one spouse will actually go to the intended beneficiary and not be the subject of a contested divorce case. Similarly, a spouse can use a premarital agreement to provide, for example, that assets brought by that spouse into the marriage, or some agreed-upon portion of assets held by both spouses within the marriage, can be used to pay for college expenses of a spouse's child of another marriage. If you have questions about whether a premarital agreement might be worth considering for yourself, an employee, or a family member, we would be happy to schedule an appointment to discuss your specific needs and identify some options for addressing them.

**Next time Part II will discuss:** Anything worth doing is worth doing right.

