

Are pre-nups worth it?

November 21, 2012 | by Cimmerian Morgan

I am considering asking my girlfriend, to whom I would like to propose marriage, whether she would be willing to sign a Prenuptial Agreement. However, I often hear on the news that Prenuptial Agreements are found to be unenforceable. Is it true? Is it worth the trouble?

It is not true that all Prenuptial Agreements are destined to be found unenforceable if challenged. The question of whether a particular Prenuptial Agreement will withstand a challenge will depend on whether that particular Agreement satisfies the statutory requirements for Prenuptial Agreements.

The New Jersey legislature has provided instruction for drafting an enforceable Prenuptial Agreement by identifying those circumstances which will cause a Prenuptial Agreement to be found unenforceable. The present New Jersey law is as follows:

A premarital or pre-civil union agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

- a. The party executed the agreement involuntarily; or
- b. The agreement was unconscionable at the time enforcement was sought; or
- c. That party, before execution of the agreement:
 1. Was not provided full and fair disclosure of the earnings, property and financial obligations of the other party;
 2. Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided;

3. Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or
 4. Did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.
- d. The issue of unconscionability of a premarital or pre-civil union agreement shall be determined by the court as a matter of law.

When a Prenuptial Agreement is found to be unenforceable, it is not because all Prenuptial Agreements are inherently unenforceable, but rather because the statutory requirements were not met. It is for this reason that any individual desiring the protections of a Premarital Agreement should consult with a matrimonial attorney who is experienced with Prenuptial Agreements and has a thorough understanding of the relevant statutory requirements and their nuances.

Entering into a Prenuptial Agreement which was not prepared by an attorney possessing a command of the applicable law would be an enormous risk which could prove to be quite costly indeed. However, a Prenuptial Agreement prepared by a knowledgeable matrimonial attorney could offer invaluable protection for your financial future and/or the financial future of your loved ones.