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Corporate Estate Planning Personal Injury Law

## Prenuptial Agreements: Are They Enforceable?

If you are considering marrying or remarrying, you may wonder if you should enter into a prenuptial agreement to protect your assets in the event of a divorce.

A fairly recent MO case from our Southern District ( Thomas vs. Thomas, 199 SW3d 847 ) has set forth the factors considered by the Courts in assessing the validity of the agreement. The Courts consider:

- 1 ) the parties access to independent attorneys;
- 2 ) the amount of time available to revise the

agreement; 3 ) bargaining positions of each party, in terms of sophistication, education, employment and experience, and 4 ) whether assets were fully disclosed. Finally, the fairness of the agreement is evaluated as of the date of execution, not at some later point in time. The Court quoted former decisions as authority, which stated agreements should be entered into "freely, fairly, knowingly, understandingly, and in good faith with full disclosure ". The more closely an agreement adheres to

these principles, the more likely it is the Court will enforce its terms.

The court also upheld the provision that no party would be entitled to main-



Prenuptial Agreements do not violate public policy.

tenance (i.e. alimony ) or attorney fees. If you are planning to marry, start the legal work well in advance of your wedding date.

### Valid agreements require:

- Full disclosure of assets
- Parties freely entering into the agreement
- An understanding of what is being signed
- Good faith dealings



If you are in an auto crash, here are a few simple tips.

### Do the following:

1. inform your insurance company of the accident.
2. go to the ER and follow up with your regular doctor.

## What To Do After an Auto Collision

3. take pictures of your car and other vehicles.
4. take pictures of your injuries as you heal.
5. collect contact information for any witnesses.
6. save all records and receipts for the incident.
7. gather all insurance policies for your attorney.

8. consult a personal injury lawyer for assistance.

### Do not do the following:

1. speak to the other party 's insurance agent.
2. sign a Release before consulting with an attorney.
3. accept a check marked " final payment " .
4. withhold detrimental

information from your attorney.

5. fail to disclose any previous medical conditions.
6. overstate your injuries.
7. make statements to the other driver regarding fault.
8. let an insurance agent pressure you into making a premature settlement.

## Trial Lawyer Asks Wrong Questions!

In a trial in a small Southern town, the Prosecuting Attorney called a grandmotherly, elderly woman to the stand as his first witness. He approached her and asked, "Mrs. Jones, do you know me?" "Why yes, I know you Mr. Williams.

I've known you since you were a boy, and frankly, you've been a big disappointment to me. You lie, you cheat on your wife, and you manipulate people and talk about them behind their backs. You think you are a big shot when you

haven't the brains to realize you'll never amount to anything more than a two bit paper pusher. Yes, I know you."

The lawyer was stunned. Not knowing what else to do, he pointed across the room and asked, "Mrs. Jones, do you know the defense attorney?"

She again replied, "Why yes, I do".

I've known Mr. Bradley since he was a youngster, too. He's lazy, bigoted, and has a drinking problem. He can't build a

normal relationship with anyone, and his law practice is one of the worst in the entire state. Not to mention that he cheated on his wife with three different women. One of them was your wife. Yes, I know him." The defense attorney nearly died.

The Judge then asked both counselors to approach the bench and in a quiet voice said, "If either of you idiots ask her if she knows me, I'll send you both to the electric chair!"

## Your Revocable Trust and Probate

You have a revocable trust and one reason you set it up was to avoid probate.

Right? Even if you have a trust, there will likely still be assets that your personal representative will have to run through probate! Here is why. First, it is very difficult to get all assets either titled in a trust

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*Even if you have a trust, there will likely still be assets that your personal representative will have to run through probate!*

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or directed to a trust on death. Almost always some asset, however small, is omitted. A stock certificate, an old car, or

a small insurance policy may be missed.

Second, your beneficiary may die before you, leaving only your estate to receive the asset. The good news is that if the probate assets are under \$40,000 in value, an abbreviated proceeding makes the process quick and economical.

## Buying or Selling a Business Requires Planning

If you are planning on buying or selling a business, you need to do some advance planning. At a minimum, your attorney, accountant and financial institution should work together as a team to bring about a successful transaction.

There are risks for sellers, especially

when providing financing, as is often the case in small business deals. But the buyer also bears risks when purchasing an ongoing business, such as as-



Buying or selling a business presents risks for both buyers and sellers.

suming the legal liability of the business, even if structured as an asset rather than stock purchase. The bottom line is to get professional assistance and perform all your due diligence.