PRE-NUPTIAL AGREEMENT

QUESTIONS COMMONLY ASKED BY PRE-NUP CLIENTS

FAQ'S

- WHO SHOULD GET A PRE-NUP/ DO I REALLY NEED A PRENUP
  - ANYONE CONSIDERING A SECOND MARRIAGE
  - ANYONE WHO HAS A MAJOR ASSET TO PROTECT
    - E.G., A PRE-EXISTING BUSINESS
    - A SETTLEMENT FROM A PERSONAL INJURY CLAIM
    - A LARGE RETIREMENT OR SIMILAR ASSET
  - ANYONE WHO WANTS TO PROTECT THEIR CHILDREN FROM A PRIOR MARRIAGE OR RELATIONSHIP
  - A WELL TO DO PERSON MARRYING A PERSON OF FAR LESS MEANS
- WHEN SHOULD A PRE-NUP BE CONSIDERED/PREPARED
  - WELL BEFORE THE DATE OF THE UPCOMING MARRIAGE

    - PREFERABLY NEVER SIGNED TOO CLOSE TO THE DATE OF MARRIAGE
    - IN A PERFECT WORLD – SHOULD BE DISCUSSED BEFORE ENGAGEMENT OR BEFORE SETTING A DATE
    - IF A PRE-NUP IS SIGNED TOO CLOSE TO THE WEDDING DATE IT TENDS TO LEAVE OPEN THE DOOR OF "DURESS"
- DOES MY PARTNER NEED TO HAVE COUNSEL
    - NO, BUT…..
    - ENCOURAGING YOUR PARTNER TO GET COUNSEL GIVES MORE CREDIBILITY AND VALIDITY TO THE AGREEMENT
- WHAT WILL MAKE A PRE-NUP INVALID DOWN THE ROAD
    - THE SINGLE MOST LEGITIMATE PROBLEM IS WHEN THERE WAS NOT FULL DISCLOSURE OF BOTH PARTIES' ASSETS, ETC.

    - ANOTHER IMPORTANT CONSIDERATION MAY BE WHETHER THE "DEPENDENT" PARTY HAD TIME AND OPPORTUNITY TO REVIEW
- HOW MUCH "DISCLOSURE" NEEDS TO BE MADE
    - THE MORE THE BETTER. MORE DETAIL LENDS TO THE VALIDITY OF THE AGREEMENT
    - SAMPLE ITEMS TO BE INCLUDED (FOR BOTH PARTIES)
        - A BALANCE SHEET FOR A BUSINESS
        - TAX RETURNS
        - PAY STUBS OR W-2'S
        - LISTING OF ASSETS
        - SUPPORTING DOCUMENTATION FOR THE LARGER ASSETS
- WILL I NEED TO GET APPRAISALS FOR ALL OF MY ASSETS

- NOT NECESSARILY. IT WILL DEPEND ON WHAT THE ASSET IS AND HOW IT'S VALUE IS DETERMINED.
- WHEN IN DOUBT, VALUE HIGH. PLACING A LOWER VALUE ON AN ASSET LEADS TO POTENTIAL CLAIMS OF LACK OF DISCLOSURE

- DOES A PRE-NUP HAVE TO BE "FAIR"
  - NO, UNDER CURRENT PENNSYLVANIA LAW, FAIRNESS IS NOT A REQUIREMENT
- HOW FAR CAN I GO WITH THE TERMS OF A PRE-NUP
  - ON THE FARTHEST END, YOU CAN KEEP YOUR SPOUSE FROM GETTING ANY PIECE OF ASSETS WHICH YOU POSSESSED COMING IN TO THE MARRIAGE
  - YOU CAN ALSO KEEP FROM HAVING TO PAY SPOUSAL SUPPORT AND/OR ALIMONY

- YOU CAN ALSO CHOOSE TO BE "REASONABLE" AND MAKE PROVISION FOR YOUR SPOUSE
    - SOMETIMES BASED ON YEARS OF MARRIAGE
    - SOMETIME BASED ON THE EXISTENCE OF CHILDREN OF THE MARRIAGE

- WHAT ABOUT CHILD SUPPORT – CAN I LIMIT THAT
  - NO – NEITHER PARENT HAS THE ABILITY TO BARGAIN AWAY THE RIGHTS OF THE CHILD
- WHAT ABOUT ASSETS THAT ARE PURCHASED/GOTTEN DURING THE MARRIAGE
  - YOU CAN OPT TO PROTECT THOSE ASSETS AS WELL

- OR, YOU CAN OPT TO STATE THAT ANY SUCH ASSETS WILL BE DIVIDED 50/50 WHICH WILL KEEP A MAJOR ISSUE OUT OF THE COURT SYSTEM
- OR, YOU CAN OPT TO DIVIDE THE ASSET IN PROPORTION TO THE CONTRIBUTION TO THE ACQUISTION OF THAT ASSET BY EACH SPOUSE WHICH WILL DECREASE THE ARGUMENTS WHICH CAN BE BROUGHT BEFORE THE COURT

- WHAT IF WE ARE LIVING TOGETHER IN A HOUSE THAT I OWN (HAD BEFORE THE MARRIAGE)
  - THE PRE-NUP CAN PROVIDE FOR YOUR SPOUSE TO BE OUT OF THE HOUSE WITHIN A CERTAIN AMOUNT OF TIME AFTER GIVING NOTICE
- WHAT ELSE CAN A PRE-NUP ACCOMPLISH

- A PRE-NUP WILL NORMALLY ALSO DEALS WITH WHAT HAPPENS TO YOUR ASSETS IN CASE OF YOUR DEATH
- IF PROPERTY WRITTEN, YOUR PRE-NUP WILL OVERCOME A WILL

- WHO SHOULD PREPARE MY PRE-NUP
  - AN EXPERIENCED MATRIMONIAL ATTORNEY
- WHY NOT MY BUSINESS OR CORPORATE COUNSEL
  - BECAUSE THE MAIN POINT OF THE PRE-NUP IS TO PROTECT AGAINST WHAT CAN HAPPEN IN A DIVORCE. CONSEQUENTLY, AN EXPERIENCED DIVORCE ATTORNEY IS THE ONLY ONE WHO KNOWS WHAT THAT MIGHT BE AND THEREFORE CAN BEST PROTECT AGAINST THAT.
- WHY NOT MY ESTATE ATTORNEY

- FOR THE SAME REASONS AS ABOVE. HOWEVER, DEPENDING ON THE SIZE OF YOUR ESTATE AND WHAT YOU WISH TO ACCOMPLISH UPON YOUR DEATH, YOUR MATRIMONIAL ATTORNEY MAY CONSULT WITH YOUR ESTATE ATTORNEY.