

Pre-Nups

My generation did not believe in the need to “protect oneself” when entering into marriage, but more than ever I see young couples asking for “pre-marital” agreements. A pre-marital agreement is a contract between an engaged couple that is intended to prevent squabbles over property, probate rights and oftentimes “spousal maintenance” if the marriage ends in a divorce. While my generation sees such contracts as planning for a worst-case scenario, I hear younger people saying that, where marriages are failing at the rate of over 75%, something must be done to avoid the courthouse upon an almost inevitable breakup of the marriage. Enforcement of these contracts is not a given, however. A Washington court will not enforce such an agreement where one party proves that it is invalid and void as a grossly inequitable distribution of property. Washington courts have found several bases to void a premarital agreement.

That may happen where one party proves that: (1) the agreement was not voluntarily signed; or (2) the agreement was unconscionable when signed and, before it was signed that party (i) did not receive a fair disclosure of the assets and debts of the other; (ii) did not waive, in writing, his/her right to a fair and accurate disclosure of the other’s assets and debts; and thus (iii) he/she did not have adequate knowledge of the assets or debts of the other.