

Prenuptial Agreements: Just What the Doctor Ordered

Parastoo E. Majd, Esquire

Corresponding Author: Parastoo E. Majd, Esquire, parastoo@hamiltonfamilylaw.com

In a world where the divorce rate continues to rise, a smartly executed prenuptial agreement is more than just a tedious and expensive legal document—it is an insurance contract for your marriage and financial future. As professionals with high-paying careers, doctors are understandably very concerned about protecting their assets. After all, doctors have worked extremely hard throughout medical school and residency, and their income is well deserved, hard earned, and should be protected. Doctors are forced to learn the skill of frugality very early in their career and are rightfully protective of their hard earned money.

Many high income earning individuals such as doctors start their career on the opposite end of the spectrum. In the start of your career, it is natural to think that you will never need a prenuptial agreement because doctors earn a meager income during residency. Instead of viewing it as a current need, perhaps frame your mind to view it as a future, potential need in case your marriage falls apart. In my practice, many of my clients have been doctors who wished they had entered into a prenuptial agreement at the start of their marriage. While we all would like to think our marriages will work out forever; unfortunately, this is often not the case.

When it comes to a prenuptial agreement, you get what you pay for. While it may seem tempting to download a form off the internet, it is imperative that you invest in the quality of your prenuptial agreement. For starters, you must ensure that your prenuptial agreement is drafted by a practitioner who specializes in the field of family law and drafting prenuptial agreements. Your prenuptial agreement signing should be videotaped, and you must go through extensive financial disclosure. There are many formalities to a prenuptial agreement that an internet form cannot cover and a Google search cannot properly explain. As a doctor, you would not use substandard equipment for your patient, so why use a substandard prenuptial agreement?

Prenuptial agreements are understandably not an easy topic to discuss with your wife or husband to be, but a few awkward conversations could potentially save you from years of financial hardship. Generally, prenuptial agreements:¹

- **Must** be in writing and signed by both parties;²
- Allow the parties to address all substantive rights in the agreement;³ and,

¹The Uniform Premarital Agreement Act (UPAA) governs any prenuptial agreement executed on or after October 1, 2007 in Florida and is located at Florida Statutes §61.079. You may read the statute on the Florida Legislature's website, *Online Sunshine*.
² Fla. Stat. §61.079(3).
³ Fla. Stat. §61.079(4)(a)(1).

- Provide that after marriage, the agreement may only be amended, revoked, or abandoned by a written agreement signed by both parties.⁴

If you are a doctor who is heading to the altar soon, consider entering into a prenuptial agreement to protect your assets and control the method and manner as to how they are distributed in the event of a divorce, by incorporating the following suggestions tailored to your profession:

- Provide for your Spouse While Waiving Alimony. Create an equitable distribution schedule payout for your spouse and waive alimony. Since Florida is an equitable distribution state, in the event you and your spouse divorce, the marital estate must be divided in an equitable manner.⁵ Alimony is based on income⁶ and as you progress in your career, your income increases; thus, your alimony obligation increases. You can still provide for your spouse in an equitable distribution payout, meaning a payout of the value of the marital estate (usually 50%, but could be more or less depending on the circumstances at hand), and base the payout schedule on the number of years you were married, as the length of the marriage increases and you invest more time in your spouse.

Consider this simplified example: Spouse A and Spouse B divorce after a 10 year marriage. Spouse A earns \$500,000 of net income per year at time of divorce and Spouse B is a homemaker and earns no income. The marital estate is worth \$1,000,000.

If the parties do not have a prenuptial agreement at the time of divorce, Spouse B would likely be entitled to ½ of the marital estate, \$500,000, in addition to alimony which is up to 40% of Spouse A's net income. Spouse A's maximum alimony exposure is \$16,666 monthly, or \$200,000 annually to Spouse B.

If the parties have a prenuptial agreement according to the above terms, Spouse A can provide for Spouse B in an equitable distribution payout. For example, the parties can contract in a way that Spouse A pays Spouse B \$100,000 annually for a period of five years. Importantly, Spouse A would not be obligated to pay Spouse B alimony if the agreement waives it. This could save Spouse A up to one million dollars depending on the length of the alimony obligation.

⁴ Fla. Stat. §61.079(6).

⁵ Fla. Stat. §61.075.

⁶ Fla. Stat. §61.08(2)(i).

- Protect your Personal Goodwill. Personal goodwill is defined as any value that attaches to the business solely as a result of one's reputation or skill, representing nothing more than probable future earning capacity, and is not proper in the consideration of dividing marital property.⁷ In Florida, personal goodwill is not divisible as it is not a marital asset. Personal goodwill contrasts with enterprise goodwill, which is an intangible asset that arises from unique advantages of the business, such as its location, employees, strategy, and brand name recognition.⁸ Unlike enterprise goodwill, personal goodwill is not considered a marital asset subject to equitable distribution in the State of Florida.

Doctors who train extensively and are equipped with unique skill sets that belong solely to them have a claim to personal goodwill. If you own or plan to own your own doctor's office, or plan to work in a previously established practice, you must add a provision in your prenuptial agreement protecting your personal goodwill. This will ensure that your practice, or your skill and knowledge that you incorporate in another practice, remains your personal goodwill and is not subject to equitable distribution.

As a doctor, you should strongly consider specifically defining in your prenuptial agreement that your practice and the passive and/or active appreciation of such is not subject to division, regardless of any change in law. While you are currently protected under the law, this protection is never guaranteed indefinitely because the law is always changing.

- Avoid Challenges. Prenuptial agreements may be challenged on two different levels upon establishing that:
 - The agreement was reached under fraud, duress, coercion, misrepresentation, or overreaching.⁹
 - The agreement makes an unfair or unreasonable provision for that spouse. Once unfairness is established, a presumption arises that there was either concealment or a presumed lack of knowledge of the defending spouse's finances at the time the agreement was reached. The defending spouse can overcome that presumption by showing he or she made a full and frank disclosure of their assets or that the challenging spouse had a general knowledge of the other party's assets and income.¹⁰

Knowing this, it is certainly possible to avoid a route wherein your spouse could challenge the agreement successfully. As mentioned earlier, it is imperative that you undergo a full and frank disclosure of your financial situation that provides not only a summary of

your assets but extensive document production, ensure that your spouse has his or her own attorney to review the agreement, and videotape the prenuptial signing to avoid any claims that the agreement was not entered voluntarily.

- Prevailing Party Clause. Last but not least, include a prevailing party provision which awards attorney's fees to the prevailing party in any action to enforce the prenuptial agreement.¹¹ In the event your spouse does not want to abide by the agreement and you have to motion the court to enforce the agreement, this is a route to request payment for attorneys' fees.

Of note, temporary alimony and fees, as in alimony and attorneys' fees during the pendency of divorce proceedings, can never be waived under Florida law as this is against Florida public policy.¹² Likewise, the right to child support can never be waived.¹³

Invest in your prenuptial agreement the same way you invest in patient care, your education, and your career. It is not an easy or ideal topic of conversation but an insurance policy that can protect all that your hard work has helped to build. Remember to consult with an attorney who specializes in drafting complex prenuptial agreements.¹⁴

While having a prenuptial agreement in no way guarantees you from a spouse challenging it, an intelligently drafted prenuptial agreement greatly decreases your chances of that happening and allows for you to insure your future and rebuild your life.

⁷ *Thompson v. Thompson*, 576 So. 2d 267, 269 (Fla. 1991); *Schmidt v. Schmidt*, 120 So. 3d 31, 33 (Fla. 4th DCA 2013).
⁸ Twitchell, BVR's Guide to Personal Goodwill v. Enterprise Goodwill, 9 *Casto v. Casto*, 508 So.2d 330 (Fla. 1987); Fla. Stat 61.079, Florida courts read the statutory provision in tandem with the language of *Casto*, 10 *Id.*

¹¹ *Lashkajani v. Lashkajani*, 911 So.2d 1154 (Fla. 2005).
¹² *Aguilar v. Montero*, 99 Sp.2d 872 (Fla. 3d DCA 2008); *Belcher v. Belcher*, 271 So.2d 7 (Fla. 1972); *Lord v. Lord*, 993 So.2d 562 (Fla. 4th DCA 2008).
¹³ *Dechant v. Florida Dep't of Revenue ex rel. Rees*, 915 So. 2d 215, 216 (Fla. 3d DCA 2005).
¹⁴ You must consult with an attorney who specializes in prenuptial agreements when drafting your specific prenuptial agreement. This article in no way guarantees results or a particular outcome of any kind.