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HOLLMAN DEJONG & LAING S.C.

PRENUPTIAL AGREEMENTS: WHO SHOULD HAVE ONE?

Prenuptial Agreements are paradoxical. On one hand, you have a couple who is about to marry and commit to spend the rest of their lives with each other. On the other hand, the couple signs an agreement that spells out what legally happens when a divorce occurs. This paradox can produce tension and anxiety.

Prenuptial Agreements (or "Prenups" as they are sometimes called) are not for everyone. However, there are certain situations when it is recommended that they be strongly considered. Here is a list of some of those situations:

- There are children from a previous marriage. A prenup can protect the inheritance of those children as the agreements can clarify what happens in the event of a death.
- One or both parties have significant assets. A prenup can provide protection so that assets brought into the marriage, by either party, are subject to limited risk.
- One of the parties is a business owner. This is especially important if the party has a business partner because the business partner wants to know that a divorce will not negatively affect the business.
- One of the parties has significant creditor trouble. A prenup can help insulate the non-debtor spouse from the debts and creditors of the other.
- There is a large disparity in wealth of the parties. The greater the disparity of wealth the more that is at risk.
- There is a significant difference in age of the parties. Typically, the older spouse will have more in retirement savings which should be protected.
- There is an expectation of large financial gifts or inheritance. It is typically expected that an inheritance or gift should remain the property of the spouse who has inherited it. A prenup can help provide protection over those assets so they are not put at risk.

Prenups do not just address what happens in the event of divorce, but they can govern the property rights of the parties during the marriage, and may determine what happens to the assets of a party who dies. It is important to note that prenups are most likely to be enforced by a court if both parties have their own lawyer. And finally, it is best if the Prenuptial Agreement is signed well before the wedding day, usually a month or more, to take the tension and anxiety of executing the Prenuptial Agreement out of what should be a joyous occasion.