

California Prenups: Your Spouse Can Marry You, but Not Your Business

Our fictional Jane Doe spends her early adult life creating a party-planning business, catering to Los Angeles' rich and famous. She is single and able to put in long hours to ensure a successful launch.

When she meets John Doe, he is toiling in medical school. They marry and Jane's party business supports them through his medical residency and internship.

John turns out not to be the man of her dreams. Their divorce is contentious and becomes a court fight. California is a community-property state, so property acquired by either spouse during marriage becomes community property to be divided between them if the marriage ends.

Fortunately - or unfortunately, depending on how you look at it - for Jane, during the marriage the value of her business triples, and even though John has no formal ownership interest, the increase in value of the party business that happened during the marriage is community property. The judge awards John half of that increased value.

To add insult to injury, John brought nothing of value to the table during the marriage, and Jane walks away having lost a sizable chunk of her business equity to John, who really does not need it in light of his medical career prospects.

What could Jane have done differently to protect her business? The most obvious answer is that before marriage, she should have negotiated a premarital agreement, also known as a prenuptial agreement (prenup for short) with John to protect her business interests.

California allows prospective spouses to enter into a premarital contract that dictates how property will be disposed of in case of divorce (or separation, death or other event). The community-property formula of equal division can be changed by the parties. Jane could have hired an experienced family lawyer to draft a prenup that would have protected her business in a future divorce and kept for her any increase in its value during marriage.

If John were smart, he would hire his own skilled family law attorney to look over Jane's proposal and they would negotiate with the help of their lawyers an agreement fair and acceptable to both that meets California's legal requirements for enforceability.

California lays out by statute the permissible scope of a prenuptial agreement. In basic terms, it must be in writing and signed; can deal with property or anything else that is not a crime, against public policy or potentially harmful to a child's right to support; must be voluntarily executed; and must not be unconscionable plus signed without full knowledge of the property and debt of the other (unless disclosure is voluntarily waived in writing).

California prenup law also has detailed protections for a party who was unrepresented by a lawyer at the time of execution, including specific required notices, a seven-day review period, and safeguards against "duress, fraud, or undue influence," and lack of mental capacity.

If you find yourself in Jane's position, be smarter and talk to a lawyer long before the wedding day.