

Before Second Marriage, Know All This

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It should not be surprising that based on the current rate of divorce (approximately 50 percent of marriages end in divorce), many individuals are quite apprehensive about marrying a second time after their first marriage ends in divorce. Business professionals who are planning to get married for a second time often have many questions about the financial risks they are assuming by marrying again. We have set forth below some of the most commonly asked questions, and provide some answers.

Question: Will my future spouse be entitled to an interest in my company if we divorce in the future?

Answer: Community property is presumed to be all property acquired by a married person during marriage, except by gift or inheritance. This includes real and personal property no matter where it is situated. Therefore, if the business is started during the marriage, it is presumed to be community property. If the business pre-existed the marriage, then a portion of any appreciation in the value of the business during marriage may be community property. If someone does not want the community to acquire an interest in a business, that person should consult with a family law attorney before marriage to discuss various ways to protect his or her interest in the business, such as a prenuptial agreement.

Q: Is a prenuptial agreement valid in California?

A: California allows two consenting adults to specify and severely limit how

community property, if any, may be acquired, and to provide that certain California community property laws not apply to them. There are, however, certain restrictions, including a prohibition against any terms that promote divorce. Two individuals can agree to limit or prevent the acquisition of community property, including real property and business interests.

Q: Can my new spouse and I be business partners?

A: A husband and wife may enter into an agreement affecting their marital rights and obligations to provide that certain California community property laws do not apply to them. For example, the parties can enter into a partnership agreement in which they set forth how the interest in a business will be held. They can set forth whether or not the business is community property. The validity and enforceability of such agreements depends on compliance with applicable statutes and are subject to the rules controlling the actions of individuals standing in a "confidential relationship." In other words, spouses owe a higher duty to one another than strangers owe to one another.

Q: What records should I keep as evidence of my premarital interest in my business and other separate property?

A: Separate property includes all property acquired prior to marriage, all property acquired after date of separation, and all property acquired by gift or inheritance. It is important to maintain all documents and records which evidence how you acquired any property (i.e. business interests, real and personal property) so that this evi-

dence can be produced in the event of divorce. If possible, you should keep copies of any documents that demonstrate the value of any of your property, especially at the date of marriage.

Q: Once I marry my fiancé, is my income community property?

A: All earnings during marriage are presumed to be community property. This means that all earnings are community property, unless there is a premarital agreement, which specifically states that earnings are separate property or the earnings are from a separate property source.

Q: Are my earnings during marriage available for payment of debts incurred by my spouse prior to marriage and during marriage?

A: Generally community property is presumed liable for either spouse's debts regardless of when they were incurred. However, a spouse's separate property is generally not liable for the other spouse's debts, except in certain specific instances.

Q: If my new spouse has children from a prior relationship, will my income be considered when computing their child support?

A: Your income should not be considered when determining or modifying child support for the children of your spouse, except in an extraordinary case where excluding the income would lead to *extreme and severe hardship* to the child.

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