



# LAW AND MEDIATION OFFICES OF KELLY CHANG

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## PREMARITAL AGREEMENT INTAKE FORM

First, congratulations on getting married!

Secondly, congratulations for being wise about your future. A prenuptial agreement is similar to car insurance or life insurance. No one *anticipates* an accident, death, or a divorce. We certainly don't like thinking or talking about it. But, divorce happens a lot these days, and it's important to be prepared.

Thirdly, before you come in, please take the time to read the Family Code sections which govern premarital agreements (attached). This will enable you to understand the law on prenups, and give you time to plan.

Finally, please take a few moments to complete this form before your complimentary call. If we decide to work together, we will enter into a written fee agreement, which spells out our responsibilities, and an advance retainer will be required (ranges from \$3,500 - \$5,000+).

### **Rules for Consultation**

1. Please do not bring any third parties to your consultation unless you are aware that there will be no attorney/client privilege for the conversation that occurs. In other words, the consultation will no longer be private and can be discoverable in court. Please note your fiancé/fiancée **MUST** also have their own representation.

2. Keep in mind that we have not been hired as your attorneys and we do not represent you until there has been a signed written agreement. To protect your privacy, we shred your intake form if not retained within 48 hours, and do not keep copies.

3. Please note that California requires a waiting period for prenups. If your wedding is under 45 days, there is an extra rush fee of \$1,000. If your wedding is under 25 days, we regrettably cannot assist you.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

1. Full Name:
2. E-mail address:
3. Phone Number:
4. Date of Wedding:

5. Address:

Do you live with your fiancé/fiancée?

Since when?

6. Fiance/Fiancee's Name:

Do they have an attorney? If so, please provide contact information. Please note that the other party MUST be represented.

7. Information about your prior marriage, if any: (Please include number of times married, dates of divorce, and children -name, age, DOB).

8. Information about YOU.

DOB:

Education (highest level completed, and name of Institution and Major/Minor):

Occupation:

Name of current employer:

Current Salary (included bonuses)

If you are self-employed, please name all of your businesses:

Estimated total value of all liquid assets (e.g., bank accounts, stock accounts):

9. Information about YOUR assets and liabilities

Estimated total value of all retirement accounts (e.g., 401(k)/IRAs etc.):

Addresses of all real property you own and general description of said property (e.g., residence, commercial building, land etc.):

Estimated fair market value for each piece of real property you own:

List total amount of each mortgage or lien against each real property you own:

Identify all vehicles (cars, boats and aircraft) that you own by make, year and model:

Total amount of debts/liabilities other than mortgages or liens involving real property:

Identify any significant intangible assets (e.g., copyrights, patents, licenses, stock options etc.):

Identify any other significant assets (e.g., interests in businesses):

Name of Accountant:

10. INFORMATION ABOUT YOUR FIANCEE/FIANCÉ

Partners Full Name

Date of Birth

Home Address

11. Information about YOUR FIANCEE'S OR FIANCÉ'S prior marriages and children

Number of prior marriages/domestic partnerships

For each prior marriage, date of divorce

Names and birth dates of each child

12. Information about YOUR FIANCEE'S OR FIANCÉ'S education/employment

Education (highest level completed, and name of Institution and Major/Minor):

Occupation

Name of current Employer

Annual Salary (including bonuses)

If self-employed, name all businesses

13. Information about YOUR FIANCÉ'S OR FIANCEE'S assets and liabilities

Estimated total value of all liquid assets (e.g., bank accounts, stock accounts):

Estimated total value of all retirement accounts (e.g., 401(k) /IRAs etc.):

Addresses of all real property your fiancee owns and general description of said property (e.g., residence, commercial building, land etc.)

Estimated fair market value for each piece of real property your fiancée owns

List total amount of each mortgage or lien against each real property your fiancée owns:

Identify all vehicles (cars, boats and aircraft) that your fiancée owns by make, year and model:

Total amount of debts/liabilities other than mortgages or liens involving real property

Identify any significant intangible assets (e.g., copyrights, patents, licenses, stock options etc.):

Identify any other significant assets (e.g., interests in businesses)

14. How did you hear about the Law and Mediation Offices of Kelly Chang?

**California Family Code §1500**

The property rights of husband and wife prescribed by statute may be altered by a premarital agreement or other marital property agreement.

**California Family Code §1502**

(a) A premarital agreement or other marital property agreement that is executed and acknowledged or proved in the manner that a grant of real property is required to be executed and acknowledged or proved may be recorded in the office of the recorder of each county in which real property affected by the agreement is situated.

(b) Recording or nonrecording of a premarital agreement or other marital property agreement has the same effect as recording or nonrecording of a grant of real property.

**California Family Code §1610**

As used in this chapter:

(a) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(b) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

**California Family Code §1611**

A premarital agreement shall be in writing and signed by both parties. It is enforceable without consideration.

**California Family Code §1612**

(a) Parties to a premarital agreement may contract with respect to all of the following:

(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.

(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.

(3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event.

(4) The making of a will, trust, or other arrangement to carry out the provisions of the agreement.

(5) The ownership rights in and disposition of the death benefit from a life insurance policy.

(6) The choice of law governing the construction of the agreement.

(7) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

(c) Any provision in a premarital agreement regarding spousal support, including, but not limited to, a waiver of it, is not enforceable if the party against whom enforcement of the spousal support provision is sought was not represented by independent counsel at the time the agreement containing the provision was signed, or if the provision regarding spousal support is unconscionable at the time of enforcement. An otherwise unenforceable provision in a premarital agreement regarding spousal support may not become enforceable solely because the party against whom enforcement is sought was represented by independent counsel.

## California Family Code 1615

1615. (a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following:

(1) That party did not execute the agreement voluntarily.

(2) The agreement was unconscionable when it was executed and, before execution of the agreement, all of the following applied to that party:

(A) That party was not provided a fair, reasonable, and full disclosure of the property or financial obligations of the other party.

(B) That party did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

(C) That party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(c) For the purposes of subdivision (a), it shall be deemed that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following:

(1) The party against whom enforcement is sought was represented by independent legal counsel at the time of signing the agreement or, after being advised to seek independent legal counsel, expressly waived, in a separate writing, representation by independent legal counsel.

(2) The party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the agreement and advised to seek independent legal counsel and the time the agreement was signed.

(3) The party against whom enforcement is sought, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written. The explanation of the rights and obligations relinquished shall be memorialized in writing and delivered to the party prior to signing the agreement. The unrepresented party shall, on or before the signing of the premarital agreement, execute a document declaring that he or she received the information required by this paragraph and indicating who provided that information.

(4) The agreement and the writings executed pursuant to paragraphs (1) and (3) were not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement.

(5) Any other factors the court deems relevant.

## PRENUPTIAL AGREEMENTS - FREQUENTLY ASKED QUESTIONS

Kelly Chang Rickert, Attorney at Law  
*California State Bar Certified Family Law Specialist*  
Law and Mediation Offices of Kelly Chang, A Professional Law Corporation  
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Congratulations on your upcoming nuptials! Should you get a prenup? The answer in most cases is yes. A prenuptial agreement is similar to car insurance. No one *anticipates* an accident or a divorce. We certainly don't like thinking or talking about it. But, it happens, and it's important to be prepared. I have prepared a list of frequently asked questions, collected from my clients. They should help you understand the very basics of premarital agreements. Please note that I practice in California, and if you have state-specific questions, you should contact a competent attorney in your state.

### **1. I am getting married. I want to explore the possibility of getting a prenup, but I don't want to insult my future spouse. How should I go about this topic?**

It is tough to rid the stigma of a "pre-nup". You hear in rap songs. Donald Trump never marries without one. It signifies a certain *je-ne-sais-quoi* that most people shun. However, in this century, I advise my clients of the following: Prenups are like car and life insurance. No one likes to think about sudden or accidental death. But it happens, just like divorce. Prenups are similar to insurance. Though it may not protect you from all problems - however, if properly drafted, it will certainly limit them. In addition, you should inform your future spouse that prenups which "promote" divorce are unenforceable. You should speak with competent counsel for information on what "promotes" divorce. Finally, marriage is a legal union of two people. The characterization and distribution of assets and debts are indispensable parts of this beautiful legal equation. That's something worth discussing, and finalizing on paper, isn't it?

### **2. What is the point of having a prenuptial agreement?**

This is a fairly complicated question, but I will try to simplify it with my three P's:

- Protection of property. This includes waiving community property rights, including real property, businesses, intellectual property, and retirement plans.
- Providing of (or not) spousal support. You can opt to waive spousal support (alimony).
- Preservation of separate property and debt. Making sure what was yours is always yours. Making sure what he/she owes is always his/her debt.

### **3. What can go into the prenup?**

A lot of things. Under the Family Code, you can include the following:

- (1) The rights and obligations of each of the parties in any of the property of either or

both of them whenever and wherever acquired or located;

(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) The making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(5) The ownership rights in and disposition of the death benefit from a life insurance policy;

(6) The choice of law governing the construction of the agreement;

(7) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

#### **4. What can't go into the prenup?**

Limitations on child support. Custody. Religion. Promotion of Divorce. Damages for cheating.

Technically, you can put these provisions in the prenup. But they are unenforceable, so what is the point?

#### **5. Is there a deadline for entering into a prenup?**

Yes. There is a seven (7) calendar day rule. Ask your attorney.

#### **6. What is a post-nup?**

Just like it sounds, a post-nup is an agreement entered into AFTER marriage.

#### **7. Why would I get a post-nup?**

Same reasons. The three (3) P's above. The difference between a pre-nup and a post-nup is a marriage in between. This is significant because marriage imposes strict fiduciary requirements on spouses. As such, post-nups will be more carefully scrutinized and easily challenged than pre-nups. It is of utmost importance that you hire an attorney to prepare a post-nup for you.

#### **8. I am interested in learning more about the law, and I don't want to pay a lawyer. Where can I be educated?**

I recommend reading Family Code sections 1600 et seq., also known as the Uniform Premarital Agreement Act. I find it very interesting. I also recommend a book written by attorney Arlene J. Dubin entitled, “Prenups for Lovers”.

**9. Do we need lawyers to do a prenup?**

Yes, and make sure they are competent lawyers. Remember the first rule: You get what you pay for. Also, please note that if you are including provisions waiving spousal support, you will need to have counsel. Ask your lawyer.

**10. Can we hire one lawyer to represent us both?**

No. In a prenup, you are changing the law to be more beneficial to you, which may or may not be beneficial to the other side. Also, a prenup is only used in the event of a divorce – and it is a direct conflict of interest for one lawyer to represent BOTH parties. Both of you need to hire separate lawyers to represent your individual interests.

**11. Ok. I guess I'll get a prenup. How much do you charge?**

For prenups, my office currently charges between \$2,500- \$5,000, and that depends on your situation.

**MY BIOGRAPHY:**

*Kelly Chang Rickert founded the Law and Mediation Offices of Kelly Chang, A Professional Law Corporation. ([www.purposedrivenlawyers.com](http://www.purposedrivenlawyers.com)). Her firm specializes in Divorce and Family Law, and handles all areas of Divorce, Annulment, Spousal Support, Child Support; Modification, Child Custody and Visitation, Prenuptial and Postnuptial Agreements, Adoptions, Property Division; Restraining Orders; and Family Law Mediation. She is happily married to the love of her life, and has a premarital agreement.*