



PRENUPTIAL AGREEMENTS: KEEPING SEPARATE PROPERTY...SEPARATE

Despite their reputation for being used by only the rich and famous, prenuptial agreements, often called “antenuptial agreements” in Oklahoma, are becoming increasingly popular among ordinary couples. This shift in popularity may be attributed to several factors. For one, as more people are waiting longer to marry, many men and women are coming into marriages with significant property holdings over which they wish to maintain exclusive control. In addition, many modern couples view a prenuptial agreement as a way to avoid future disputes over property. Also, when spouses are coming into a second marriage, they often want assurances that their individual family will receive provision upon that spouse’s death. Since prenuptial agreements allow an engaged couple to “waive rights to each other’s separate property or in other ways alter the incidents of marriage that would otherwise attach,” a prenuptial agreement is an effective tool for couples who wish to maintain and manage their individual property rights.

Oklahoma law recognizes a distinction between separate property, which is the property each spouse brings into the marriage, and jointly-acquired or marital property, which is property the couple acquires during marriage. In fact, an Oklahoma statute explicitly directs a court granting a divorce to “enter its decree confirming in each spouse the property owned by him or her before the marriage.” 43 O.S. Supp. 2006 § 121(B). Under this statute, each party maintains

rights to the separate property he or she owned before the marriage, even without a prenuptial agreement. On the other hand, the statute provides that “property which has been acquired by the parties during their marriage” will be divided between the parties at the court’s discretion. *Id.* The court is only bound to divide the marital property in a “just and reasonable” manner. *Id.* However, the statute does mandate that the division of jointly-acquired property is to be governed by a valid prenuptial agreement. *Id.*

Although the distinction between separate and marital properties may seem pretty clear, Oklahoma case law is riddled with cases in which the parties disagree on whether certain property should be considered separate or marital. In most cases, the disputes have involved property that one spouse brought to the marriage as separate property, but which increased in value over the course of the marriage. Oklahoma case law provides that if the increase in value is caused by “appreciation, inflation, changing economic conditions, or circumstances beyond the parties’ control,” the increase will automatically be considered separate property. *Templeton v. Templeton*, 1982 OK 127, ¶ 5. However, if the increase in value may be attributed to either the investment of marital funds or the joint efforts of both spouses, the increase will be considered marital property, subject to division. *Murphy v. Murphy*, 2010 OK CIV APP 1, ¶ 28. Moreover, courts have even held that “the enhancement in value of one spouse’s separate estate, when attributable to the personal efforts of *either* spouse, constitutes spousal property that is subject to division.” *Id.* In addition, the court may treat separate property as marital property when it has been placed under joint title or when it has been commingled with marital property to the extent that it becomes impossible to tell which is which.

To avoid the dispute over whether property is separate or marital in nature, couples should enter into a prenuptial agreement. When couples agree before marriage that separate

property will remain separate property, courts will rely on that language to determine how to divide the marital estate. Even in cases in which spouses have commingled or jointly titled their separate properties, Oklahoma courts have honored the explicit language of the prenuptial agreement and awarded to each spouse their separate property.

In *Neundorf v. Neundorf*, the Oklahoma Court of Civil Appeals demonstrated its deference to a prenuptial agreement in the division of the marital estate. 2006 OK CIV APP 10. Before their marriage, Alton and Ramona Neundorf entered into a prenuptial agreement stating that the spouses “intend and desire that all property owned respectively by each of them at the time of their marriage, and all property that may be acquired by each of them from any source during the marriage, shall be respectively their separate property.” *Id.* at ¶ 2. While they were married, each of the spouses commingled their separate funds to jointly purchase three farms and a collection of farm equipment, some of which was jointly titled. *Id.* at ¶ 5.

When the couple later decided to divorce, they reached an agreement for the division of the real and personal property of the estate. *Id.* at ¶ 4. However, because the parties’ agreement awarded a larger portion of the estate to the husband, the wife asked the court for an additional cash settlement to compensate her for the separate funds she had contributed toward the purchase of the marital property. *Id.* The husband argued that the wife was not entitled to any additional award because the amount of separate funds she had contributed to the purchase of the jointly-acquired properties was irrelevant. *Neundorf* at ¶ 9. Both the trial and appellate courts disagreed.

Even though the spouses’ separate property had been commingled and used to purchase property, the court’s division of property was subject to the couple’s prenuptial agreement. Because the prenuptial agreement provided that each spouse’s separate property would remain

that spouse's separate property, the court awarded the wife a cash settlement to fully compensate her for her contributions of separate property toward the purchase of the farms and equipment. *Id.* In doing so, the court showed that Oklahoma courts favor prenuptial agreements and will follow those agreements when they are valid. In addition, it demonstrated the effectiveness of prenuptial agreements at protecting the property interests of spouses in cases of divorce.

Another very important purpose of a prenuptial agreement is to avoid disputes or unplanned for claims by a surviving spouse in the estate or property of the deceased spouse. The surviving spouse is automatically granted by statute certain personal or other property of the deceased spouse unless those rights are waived or limited via a prenuptial agreement.

Although Oklahoma law requires a divorce decree to award to each spouse the separate property he or she owned before marriage, it is clear that disagreements over what constitutes separate property are common. Prenuptial agreements provide an easy solution to these potential conflicts. By agreeing before marriage how property should be distributed upon divorce or the death of one spouse, individuals can be sure that their property is handled according to their wishes. In addition, couples can reduce some of the uncertainty that accompanies a new marriage and will be free to focus on the health of their relationship.

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