Colorado Prenuptial Agreements

Colorado recognizes prenuptial and post-nuptial agreements. A spouse can waive virtually all rights except child support. The question is, should they?

Most prenuptial agreements start with both spouses waiving all rights to the other spouse's property whether that property is acquired before or during the marriage. The spouses also waive any right to spousal support (alimony) although a court can modify that waiver if unconscionable at the time of divorce. My shorthand rendition is "what's mine is mine and what's yours is yours and never the two shall meet." This often ignores reality. Under the best of circumstances, our life stories start with good health, uncomplicated pregnancies, physically and mentally healthy children, and then in our later years decline, disease, and death. Some never have the luxury of good health. Many experience difficult or no pregnancies. Many have children somewhere on the spectrum with one or both parents making significant sacrifices along the way. That prenuptial agreement executed at age 25 probably does not consider what occurs on the way to age 50+.

Unfortunately, there are no easy solutions and no easy conversations. There are particular areas that are easier to address than others. For example, inheritance and family money. Sometimes, a prenuptial agreement will only address inheritance and family assets, leaving everything else acquired during the marriage to be divided in the case of divorce. Another example would be waiving all rights upon death. A waiver of all rights upon death means that the spouse has no right to inherit from the other spouse including any statutory inheritance rights granted under Colorado law. While this may be appropriate when death occurs shortly after marriage, it may not be appropriate later in life after many years of marriage.

To be enforceable, prenuptial agreements must have certain language and disclosures. Finances must be fully disclosed. The agreement must contain explicit statutory language making it abundantly clear what rights are being waived. While separate legal counsel for both spouses-to-be is not required, it is mandatory in our office.

A prenuptial agreement is only the start. If the assets agreed to be kept separate are not kept separate, the agreement may be difficult and costly to enforce. Separate or multiple trust agreements can be helpful because the trust keeps the property separate. The fact that this agreement exists should not be forgotten because it is probably enforceable even though it is decades old.