

# Legal Matters

winter 2010

**LYONS & TZANOUDAKIS, LLP**

100 Conifer Hill Drive, Suite 504  
Danvers, MA 01923

Phone: (978) 750-0009 or (978) 433-6271

Fax: (978) 750-4884

Website: www.ltlaw.net

## Preuptial agreements: No longer just for the rich and famous



Preuptial agreements used to be only for celebrities, but in the last five years they have become dramatically more common in the U.S., and now it's quite ordinary for middle-

class couples to ask for them.

There's no one single reason for the change. Rather, a number of factors are working together to make prenups more acceptable - including:

- The recession. Many people have seen the value of their homes, pensions and investments shrink dramatically, and they are concerned about protecting what they have left. In addition, a lot of people want to shield themselves from debts brought to a marriage by the other spouse.
- Women are more likely to bring substantial assets to a marriage. Years ago, the vast majority of prenups were initiated by men, but today it's increasingly common for women to ask for a prenup.
- A growing number of people are entering into second marriages (or third or fourth marriages), and they want to protect children from prior relationships.
- Many people today have memories of bitter divorce battles between their own parents, and they want to prevent that from happening to them.
- The social stigma of prenups is far less than it used to be, as more and more people view them as a straightforward financial planning device.
- At the same time, the law involving prenups has become clearer, so people can enter into them with more certainty.

Prenups can be a valuable technique for sheltering assets, avoiding expensive divorce battles, and protecting children. However, it's important to remember that signing a prenup doesn't solve every problem. Even if you sign a prenup, you have to remember to take certain actions (and avoid certain actions) during the marriage in order to preserve the validity of the agreement.

## More employees are entitled to time off to care for children

An employee may have a right to take time off to care for a sick child even if the employee isn't actually the parent of the child, according to the U.S. Department of Labor.

This is true under the Family and Medical Leave Act, a federal law that gives employees up to 12 weeks of unpaid time off each year for personal sick leave or to care for a family member who is ill.

**Employees who have a right to take time off to care for a child include not only biological parents, but also adoptive parents, foster parents, stepparents, and anyone else who stands in the shoes of a parent.**

According to the Department, employees who have a right to take time off to care for a child include not only biological parents, but also adoptive parents, foster parents, stepparents, and anyone else who stands in the shoes of a parent by assuming "day-to-day responsibilities to care for and financially support a child."

This could include:

- A grandparent or who takes in a grandchild and assumes responsibility for raising the child because the parents are unable to do so.
- An aunt who takes over raising a child after the death of the child's parents.
- A same-sex partner who shares in raising a child but doesn't have a legal relationship to the child.

## Businesses are under fire over background checks

A growing number of companies have been routinely conducting credit checks and criminal background checks of employees and job applicants - in part because new technology has made it easier to do so.

However, the federal Equal Employment Opportunity Commission recently released a letter warning that the use of credit checks to screen job

## Be careful with joint property and 'payable on death' accounts



If you intend to leave your children equal shares of your estate, don't forget

to consider any money or property held jointly with a child. If you have recently added a child to a bank account, own property jointly with one of your children, or have set up a payable-on-death account with a child as the beneficiary, you might want to revise your will, or at least reconsider how the asset is titled.

Here's why: Property in a joint account passes outside of your estate. If you add a child to one of your bank accounts, perhaps as a convenience because the child is helping to manage your finances, the account will pass to that child alone when you die. This is true for any property held in joint tenancy, or any property in a payable-on-death account.

If your will says that your estate will be divided equally between your children, then only your *other* property will be divided equally between them. The child named on the joint account will get all that money or property alone.

If you don't intend for that child to receive a bigger share of your estate, you can add a provision in your estate planning documents stating that any property passing to a beneficiary through joint ownership will be treated as an advance on that beneficiary's share. In that way, all your children will be treated equally (assuming you have enough assets in addition to the joint property to equalize the shares).

## Faulty hip

For instance, even if a prenup says that your pension or 401(k) plan will remain separate, your spouse must generally still sign a waiver *after* the marriage takes place in order to satisfy the requirements of federal pension law. If your spouse doesn't sign the waiver, then the federal law will override your prenup, and your spouse may be entitled to a share of your pension.

Also, suppose you have an investment account and your prenup says that it will remain your separate property. You'll want to be careful not to add your spouse's name to the account, file joint tax statements that include the account, or use joint assets to pay taxes relevant to the account. Each of these things could potentially undermine the agreement by suggesting that you have made the account joint property.

## The federal estate tax is back in 2011



The federal estate tax is back in effect as of January 1, 2011.

Originally, the tax was to apply to all estates that are worth over \$1 million, at a rate of 55%.

The exact details have been in flux. A deal in Congress might raise the limit and lower the rate – for now. However, any such deal is likely to be temporary – which means that the \$1 million limit and the 55% rate will be scheduled to return in a couple of years or so.

The estate tax is no longer a problem just for the rich. A huge swath of the middle class could now be affected if at some point in the next few years the combined value of their home equity, their retirement savings, and the proceeds of any life insurance policy they own tops \$1 million.

That makes it very important to plan your estate – or re-evaluate your estate plan – if you haven't already done so. There are many techniques that can be used to save your heirs from having to pay taxes to Uncle Sam on some of their inheritance.

In fact, the current economic environment – with ultra-low interest rates and depressed valuations of real estate and many businesses – is a great time to plan transferring assets to the next generation. Many good estate planning ideas involve “locking in” today's valuations and rates so that taxes can be avoided on the future appreciation of assets.

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applicants could be illegal if it leads to the disproportionate exclusion of women, minorities or other protected groups.

The Commission is stepping up its investigations of credit checks, criminal background checks, and other hiring policies that may have a negative impact on certain groups.

Many states are also cracking down on background checks. For example, a new law in Illinois prohibits employers from asking about an employee's or job applicant's credit history, and from using credit history as a basis for an employment decision.

The law exempts some employers, including banks, insurance companies and police departments. It also exempts high-level managers and employees with unsupervised access to large amounts of cash or to customers' financial information.

Oregon recently adopted a law limiting credit checks by employers in an effort to ease unemployment, and Hawaii, Louisiana and Washington have passed similar measures.

In Massachusetts, many employers must overhaul their job applications to comply with a new law that prohibits most businesses from inquiring about an applicant's criminal history on an initial job application. However, an employer may still make decisions based on criminal history information obtained from other sources. The law exempts certain employers, such as schools and day care providers.

## Is your hobby a ‘business’ and subject to zoning rules?

Many cities and towns have zoning rules that limit people's ability to operate a business on their property. But sometimes it can be difficult to tell whether a homeowner's activity is a business or a hobby. If there's any doubt, you might want to talk with an attorney.

For instance, a New Jersey woman had a four-acre home on which she bred German Shepherd show dogs. She obtained a permit to build a storage building on her property. She used the building to house dogs, and she built dog runs outside it.

The woman bred 10 to 12 dogs a year. She kept some as show dogs, and she sold the rest.

The town cited her for violating a zoning ordinance that prohibited her from operating a commercial dog kennel.

The woman argued that she wasn't in business. She said she raised the dogs as a hobby, and while she did sell a few of the dogs, she never made a profit on the operation. She noted that she had a separate full-time job, that she raised the dogs entirely by herself and never hired anyone to help, and that she didn't advertise the dogs for sale.

The case went to court, and the woman lost. The court said the woman may have thought of what she did as a hobby, but her dog-raising operation was more than just an incidental use of her

## replacements spark hundreds of complaints

Hip replacement surgery is a common procedure, especially among the elderly. But recently, there have been complaints about several of the hip replacement devices that are frequently used in the surgery. A number of people have filed lawsuits claiming that the devices failed soon after they were implanted, causing injuries and making it necessary for them to have a second surgery.

For instance, DePuy Orthopaedics, a division of Johnson & Johnson, sold about 93,000 ASR Hip Resurfacing Systems and ASR XL Acetabular Systems. The company has reported that about 12 percent of patients required “revision” surgery within five years after implantation.

DePuy recalled the products last August after the Food and Drug Administration received hundreds of complaints about them.

**Many people say their devices failed soon after being implanted, or led to pain, inflammation, or damage to tissue or bone.**

The lawsuits claim that the products were defectively designed, and that DePuy failed to alert consumers or orthopedic surgeons even after it first learned about the problem. British studies released in March 2010 have suggested showed that metal-on-metal implants, such as the ASR device, are dangerous because they can generate large amounts of metallic debris as they wear. This debris can cause severe inflammation in some patients, resulting in pain in the groin, tissue death in the hip joint, and loss of surrounding bone.

One of the lawsuits was brought by Maurice Brigham, 50, an equipment operator from San Bruno, California. Brigham underwent hip replacement surgery in 2007 with the ASR device. He claims that after the surgery, he began suffering severe pain, swelling, inflammation, infection and damage to the tissue and bones surrounding the implant.

Last August, he underwent surgery to remove the ASR equipment. But the infection of the surrounding tissue and bone is so severe that no replacement device has been implanted yet. Brigham is currently bedridden and unable to walk.

There have been complaints and

property and was indistinguishable from a commercial kennel.

Although the woman never turned a profit, the court said this didn't make a difference because many commercial businesses operate for years without making a profit.

lawsuits involving hip replacement components made by other manufacturers as well.

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