

Nuptial Agreement Forms and Lists for Estate Planners

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Kim Kamin is a Principal at Gresham Partners, LLC where she serves as Chief Wealth Strategist and a Client Advisor. In that capacity, she leads Gresham’s development and implementation of estate, wealth transfer, philanthropic and fiduciary planning activities, and advises clients. Until recently she was a partner in the Private Clients, Trusts and Estates Group at Schiff Hardin LLP where for many years her legal practice involved all aspects of trust and estate planning, administration and dispute resolution; advising individuals, families and closely held businesses on a wide array of wealth preservation, asset protection and succession planning issues; representing fiduciaries, custodians, and beneficiaries in estate administration and contested trust and estate matters; and serving as counsel for the formation and operation of not-for-profit entities. Kim is a Fellow with the American College of Trust and Estate Counsel where she chairs the New Fellows Steering Committee. Professional awards and recognitions include Illinois Attorney Under 40 To Watch by the Law Bulletin Publishing Company (2008), The Best Lawyers in America® in the practice areas of both Trusts and Estates, and Litigation - Trusts & Estates, U.S. News and World Report (2012-present), Illinois Rising Star in Illinois Super Lawyers (2009, 2011), Super Lawyer in Illinois Super Lawyers (2012-present), Leading Lawyer in Trust, Will & Estate Planning Law with the Illinois Leading Lawyer Network (2010-2014), and “AV Rated” by Martindale-Hubbell. .

Editor’s note: These Forms were part of the author’s outline, Nuptial Agreements for Estate Planners, which appeared in the April 2016 issue of The Estate Planning Course Materials Journal. This outline is an updated version of the outline that the authors presented for the ALI CLE Audio Webcast, Nuptial Agreements for Estate Planners, November 2, 2015. An earlier version was presented at the ALI CLE Course of Study, Estate Planning in Depth, June 21-26, 2015.

I. SAMPLE LISTS

- A. Sample List of Prenuptial Agreement Questions
- B. Financial Disclosure Form
- C. Sample Issues List for Parties to Discuss Before Drafting Begins
- D. Sample Issues List for Drafting of a Postnuptial Agreement
- E. Sample Estate Planning Provisions for Nuptial Agreements

A. Sample Prenuptial Agreement Questions

Please state names, addresses and contact information of each party.

Please state name, address and contact information of each party’s attorney.

- However significant or insignificant, there must be full disclosure of all assets, income and liabilities of both parties. This includes all trusts of which a party is a beneficiary. Please complete the attached financial disclosure form in full. Also please attach copies of your last 3 years of income tax returns.

- Have either of you been married previously? If so, to whom? When were you married? How was the marriage terminated (e.g., death or divorce)? If by divorce, please provide court, case number and copy of decree and any agreements.
 - Does either party have any children? If so, please provide names and dates of birth.
 - What are your primary goals for drafting the prenuptial agreement?
 - Do you want to keep all property prior to the marriage separate? Do you wish to retitle any assets in joint tenancy (e.g., residential real property)?
 - How do you want to hold property acquired during marriage (e.g., separately or jointly)? Note: A good option for keeping property separate is for it to be held in separate trusts.
 - How do you wish property to be allocated in the event of death?
 - How do you wish assets and debts to be divided in the event of a divorce?
 - Do you wish to provide for spousal maintenance or alimony to each other (e.g., temporary alimony, long-term alimony, or lump-sum settlement)?
 - Any special considerations depending on whether you have children together or whether one of you becomes disabled?
13. Do you have any non-financial agreements you wish to make concerning lifestyle issues (e.g., observing particular religion, practices such as smoking or wearing a seatbelt, etc.)?

B. Financial Disclosure Form

All property on this Exhibit is _____'s Individual Property as defined in **Paragraph _____** of this Agreement, unless designated as Marital Property.

ASSETS:

Cash and Equivalents:

| | |
|----------------------------|----------------|
| Cash | \$0.00 |
| Checking/Savings | \$0.00 |
| Other | \$ <u>0.00</u> |
| Total Cash and Equivalents | \$0.00 |

Investments:

| | |
|-------------------|----------------|
| CDs | \$0.00 |
| Stocks and Bonds | \$0.00 |
| Mutual Funds | \$0.00 |
| Other | \$ <u>0.00</u> |
| Total Investments | \$0.00 |

Retirement Accounts:

| | | |
|----------------------------|---------------|----------------------|
| IRA | \$0.00 | |
| Pension Fund | \$0.00 | |
| Other | <u>\$0.00</u> | |
| Total Retirement Accounts | | \$0.00 |
| Other | | \$0.00 |
| TOTAL ASSETS: | | \$0.00 |
| <u>LIABILITIES:</u> | | |
| Student Loans | \$0.00 | |
| Credit Cards | \$0.00 | |
| Other | | <u>\$0.00</u> |
| Total Debt | \$0.00 | |
| TOTAL LIABILITIES: | | <u>\$0.00</u> |
| TOTAL NET WORTH: | | <u>\$0.00</u> |

C. Sample Issues List for Parties to Discuss Before Drafting Begins

In order to facilitate in the process of drafting the prenuptial agreement, you should consider your goals and financial situation prior to our meeting next week. As we discussed, we advise that you communicate openly with Jane regarding the prenuptial agreement to the extent that you are comfortable doing so, as the resolution of issues between the two of you will greatly improve the efficiency and amicability of the process.

You requested that we set forth for you specific items you should address before we meet for our pre-drafting session next week. The following issues are major items that will need to be addressed in the prenuptial agreement process.

1. Lifestyle. What is the amount of money you and Jane will spend each month to maintain your lifestyle, and to what extent do you wish to finance Jane in maintaining such a lifestyle in the event of divorce? What about in the event of your death?
2. Maintenance. Will either of you be required to make monthly maintenance payments in addition to a property settlement? If so, will those payments cease upon remarriage?
3. Property Settlement. Will you list assets that you wish to keep separate and then divide only assets acquired after your marriage based on a percentage division (e.g. 50/50 split)? If so, will the percentage vary based on the number of years you are married? If you wish to base the property settlement on the number of years married and ignore the separate/marital property distinction, at what point do you increase the settlement amount (e.g. \$100,000 for every year up to 10 years, and then \$200,000 for every year thereafter; or \$100,000 for every year and \$2,000,000 flat once you reach 10 years)?
4. Residence. Will Jane retain the residence in the event of death or divorce? If so, who will be responsible for the remaining mortgage, if any? Will Jane be required to sell the home and give you your share of the proceeds or buy you out of