

# SMOLENPLEVY

EST. 1977

## Report From Counsel

Insights and Developments in the Law Summer 2022

### *What Can a Prenuptial Agreement Do for You?*

It has become more common for people to consider signing a prenuptial agreement, or prenup, prior to getting married. These agreements are sometimes thought to only be for “the rich,” but they can save anybody a lot of time and stress later on.



*Alan Plevy*

#### **What is a Prenuptial Agreement?**

A prenuptial agreement is a contract that engaged couples will sign to specifically lay out what each spouse owns. This includes not only all of their assets and debts, but also a layout of how their property will be divided if they get divorced.

The agreement can also include provisional information about children brought into the marriage by one or both of the spouses, along with what is expected of each spouse during the marriage.

#### **What Does a Prenup Do?**

A prenup is primarily a precaution for divorce. It can help avoid arguments over equitable distribution of assets and property and potentially avoid a significant amount of hassle later on. It can also help to plan for certain issues like



*Kyung (Kathryn)  
Dickerson*

inheritance, especially if one or both spouses have children from outside the marriage who have not been adopted by their partner.

#### **What Happens if You Do Not Have a Prenup?**

If a divorce happens without a prenup, the negotiation period will begin. All aspects of property distribution will need to be negotiated by the couple. By signing a prenup, this typically long and heated process can be reduced. People tend to be more reasonable and calm during the prenuptial process, since the conditions are prematurely agreed upon.

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### *SmolenPlevy In the Community*

SmolenPlevy is pleased to announce that Alan Plevy, Kyung (Kathryn) Dickerson, and Daniel Ruttenberg are honored as 2022 Super Lawyers in both Virginia and Washington, D.C.

SmolenPlevy is now offering mediation services. Mediation is different from representation or litigation. Mediation is a form of alternative dispute resolution, involving a process through which parties reach binding decisions. If you would like more information on mediation services, please contact our office.

# Is a Living Will Right For You?

Many people choose to craft a living will as part of their estate plan. These documents serve as a directive that can help protect incapacitated people from getting unwanted medical treatment. The estate planning process can be intimidating and sometimes confusing, but knowing your options can create peace of mind.



Jason  
Smolen

## What is a Living Will?

A living will is a document that dictates your wishes for your medical care if you become unable to make your own medical decisions. It does not require anyone else to execute it, and, since this document is legally binding, it overrides all decisions made by a healthcare proxy or legal guardian. Doctors must follow all wishes you express in a living will.

## What is in a Living Will?

A living will can contain any foreseeable medical decision that may be relevant in the event that you become incapacitated.

A common example in many living wills is the “Do Not Resuscitate” (DNR) order. This clause prevents doctors from attempting to resuscitate someone in the event that their heart or breathing stops. A similar provision is the “Do Not Intubate” (DNI) order, which tells doctors not to intubate someone if they would require it to assist with breathing or eating.

These choices, and many more, are carefully specified in a living will, and would not require you to rely on your family members to make those decisions for you.



Daniel  
Ruttenberg

## What are the Benefits of a Living Will?

The primary benefit of a living will is that it allows you to make a clear expression of your medical care wishes without needing to rely on or burden someone else to make those decisions for you. Since a living will is legally binding, it ensures that your wishes will be followed, even if you are not able to express them yourself. This can help prevent abuse from your caretakers or medical professionals, who might decide to go against your wishes for their own reasons.

## Why Do You Need More Than a Living Will?

Unfortunately, a living will is only a single document, and cannot guard against every possible situation that may come up. That is why a living will is best used as part of a more complete estate plan, including other protective measures like a healthcare proxy and a power of attorney.

The better you prepare for the possibility of incapacity, the more peace of mind you and your loved ones will have, should this situation arise.

If you have additional questions, contact Jason Smolen at [jdsmolen@smolenplevy.com](mailto:jdsmolen@smolenplevy.com) and Daniel Ruttenberg at [dhruttenberg@smolenplevy.com](mailto:dhruttenberg@smolenplevy.com).

## What is Marital Property?

When you go through a divorce and begin the process of equitable distribution, one key factor will be the question of what counts as marital property. This is crucial because only a couple's shared marital property is subject to distribution, while their individual separate property is not.

### Defining Marital Property

Marital property is property that is shared between both spouses while they are married. This includes anything they buy together, like a family home or car. It can also

include assets, such as any shared bank accounts or investment accounts started after they got married, retirement accounts if a person's spouse contributed to it during their marriage, any pensions or other benefits that vest during the marriage.

### Marital Property vs. Separate Property

On the other end, there is separate property. It is common to think your

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# *How Businesses Can Hurt Themselves With Form Contracts*

It can be easy for a small business to go online, find a form contract, and use that for their day-to-day business. The problem is that form contracts are not a substitute for carefully crafted contracts by lawyers. To avoid the problems associated with form contracts, it's crucial to understand the basics first.

## **What is a Form Contract?**

A form contract is a type of pre-made contract that only uses standardized, general terms, which have not been negotiated by the parties to the contract. These contracts are made to be filled in with the parties' names and other information, and cannot be easily modified. Many types of form contracts can be found online, which can then be easily filled out with any relevant information and used right away.

## **Why Do People Use Form Contracts?**

The appeal of these contracts is that they are quick, easy, and inexpensive. This makes them desirable for businesses that want to get paperwork out of the way quickly without any hassle. Form contracts are usually used by companies for transactions that are standard and do not typically require a great deal of negotiation, such as contracts of sale for certain goods. However, some companies will use form contracts for a variety of other purposes, including potentially serious contracts that may involve valuable assets or significant rights and obligations.

## **What is Wrong With Form Contracts?**

The problem with form contracts is that they are too general. This makes them a poor fit for any situation more complex than the most basic transactions. For example, they may lack provisions for dealing with issues specific to certain industries, may not account for differences in the law between jurisdictions, and may not address how disputes are resolved and paid for. This means that people who rely on form contracts may find themselves dealing with serious legal issues if they ever get into a dispute

with someone over the terms of a contract.

## **What Should You Do as a Business Owner?**

While form contracts can be useful in some circumstances, it is generally smarter to make sure your business contracts are reviewed by a lawyer. By making sure all of your bases are covered, you limit your liability and minimize the risk of legal problems later on. That way, you can focus on your business and avoid entering the courtroom.

# *What is Marital Property?*

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property automatically becomes your spouse's property just because you are married to them, but this is not actually the case. In fact, certain things like inheritances, gifts from people aside from your spouse, or settlements from lawsuits can remain separate property, even if you obtain them while you are married. Assets acquired prior to marriage can be separate, so long as they are protected and kept separate.

## **Converting Separate Property into Marital Property**

Separate property does not necessarily stay separate, and it is possible to convert your own separate property into marital property by accident. This mainly occurs by intermingling properties, such as in the case of

transferring funds from a personal account to a shared account, or by using a home you owned prior to getting married as a family home. It is not always clear whether a person's separate property has become marital property, and it can become a serious legal issue during a divorce to decide what is, or is not, marital property.

## **Why it Matters if Something is Marital Property**

The reason all of this matters is simple: when a divorcing couple goes through property distribution, their marital property gets distributed, while their separate property remains with each individual person. An experienced divorce attorney can help you to retain as much of your property as possible.



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## What is At-Will Employment?

The most common form of employment in the United States is at-will employment. What does it mean for someone to be employed at will, and how does that affect businesses and their employees?

### Explaining At-Will Employment

At-will employment is a type of employment where an employer agrees to pay an employee for an indefinite period of time for an agreed-upon salary. Typically, at-will employment does not involve a formal contract beyond the basic documentation required for employment. This means that both the employer and the employee have the right to terminate the employment relationship at any time,

for any reason, as long as it does not violate any anti-discrimination laws.

### Why People Work for At-Will Employers

The biggest reason that people use at-will employment is simple: it is by far the easiest form of employment to engage in, with the least required negotiation or documentation. It is also very flexible, giving employers broad authority to fire employees who misbehave, fail to live up to expectations, or for no reason at all. This convenience means that, at least for the majority of employees, there is very little reason to use anything other than at-will employment.

### The Alternative to At-Will Employment

The main alternative to at-will employment is the creation of an employment contract. An employment contract dictates the specific terms of an employee's job, including the scope of their duties, their salary and benefits, and the circumstances under which they can be dismissed.

Employment contracts are usually less flexible than at-will employment, and an employer can face a breach of contract suit if they fire a contract employee for any reason not stated in the contract. However, employees are similarly bound by their contracts, which means they cannot easily leave their position to pursue opportunities at other businesses and may even be restricted from departing the company to start their own business, depending on the terms of their contract.

### When At-Will Employment is Appropriate

Whether at-will employment or contract employment is appropriate for a job will depend heavily on individual circumstances. If you are not sure which is better for your employees or your business, you should speak to a lawyer with experience handling employment law issues. They can advise you on what may work best for your business, and help protect you from the potential legal issues that may arise as a result.

*Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

## What Can a Prenuptial Agreement Do for You?

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### Should You Get a Prenup?

For most couples looking to get married, a prenuptial agreement should be considered. A prenuptial agreement is a potentially useful document that can save an extraordinary amount of time and money later on.

If you need assistance deciding if a prenuptial agreement is best for your situation, contact Alan Plevy at [abplevy@smolenplevy.com](mailto:abplevy@smolenplevy.com) or Kyung (Kathryn) Dickerson at [kndickerson@smolenplevy.com](mailto:kndickerson@smolenplevy.com).