DRAFTING PRENUPTIAL, POST-MARITAL AND COHABITATION AGREEMENTS

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CHAPTER 12
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DRAFTING PRENUPTIAL, POST-MARITAL AND COHABITATION AGREEMENTS

I. INTRODUCTION

Prenuptial, post-marital and cohabitation agreements are normally entered to clarify and protect the characterization of assets and debts, and to determine the rights and obligations of parties during marriage, and in the event of death or divorce. Prenuptial and post-marital agreements are guided by both statute and case law, whereas cohabitation agreements have not been addressed under statute. Generally, if parties are represented by independent counsel, have been allowed adequate time in the process, and have been provided proper disclosure of financial information, then a carefully drafted, properly executed agreement will be very difficult to set aside in Texas. There are many traps in the process, however, which can trigger enforcement issues.

Before we begin drafting, let’s discuss the statutory basis for these agreements.

II. PREMARITAL AGREEMENTS

The beginning point for most client consultations will be an understanding of what can and cannot be accomplished in a Premarital Agreement.

A. Content of the Premarital Agreement

The Texas Family Code in Subchapter A of Chapter 4 has generally adopted the Uniform Premarital Agreement Act.

Texas Family Code Section 4.001 defines a "Premarital Agreement" as an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage. § 4.004 reiterates that "A premarital agreement becomes effective on marriage."

Section 4.003 of the Texas Family Code sets forth the type of matters which may be addressed in the premarital agreement as follows:

"(a) The parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.
(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
(3) the disposition of property on separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
(4) the modification or elimination of spousal support;
(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;
(6) the ownership rights in and disposition of the death benefit from a life insurance policy;
(7) the choice of law governing the construction of the agreement; and
(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty."

Subsection (b) specifically states that child support cannot be adversely affected by a premarital agreement (§4.003(b)(1). Consequently a provision eliminating or reducing the child support on divorce would not be enforceable, and should not be addressed in the agreement.

Additional duties and obligations respecting the children, however, may be considered, such as college education, room and board, automobiles, travel, weddings, etc. Be careful, though, not to limit the support obligation owed to the child.

"Property" which may be considered in the agreement is very broadly defined as an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings. (§4.001(2)). For example, the right to future earnings may be addressed under the contract.

B. Formalities/Amendments

The premarital agreement must be in writing and signed by both parties. Consideration for the agreement is not necessary (§4.002). After marriage, a premarital agreement may be amended or revoked only by written agreement signed by the parties, (§ 4.005) which is also enforceable without consideration.

Although consideration is not required, it is often recommended, from a practical standpoint, to assist in enforcement.

(See Exhibit D Form)

III. POSTMARITAL AGREEMENTS

Subchapter B of Chapter 4 of the Texas Family Code outlines provisions for a marital property agreement executed between spouses.
A. **Partition or Exchange of Community Property**

Section 4.102 provides that spouses can partition or exchange their interest in community property as follows:

"At any time, the spouses may partition or exchange between themselves all or part of their community property, then existing or to be acquired, as the spouses may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes that spouse’s separate property. The partition or exchange of property may also provide that future earnings and income arising from the transferred property shall be the separate property of the owning spouse."

Spouses may also agree that the income or property arising from the separate property that is then owned by one of them, or that may thereafter be acquired, shall be the separate property of the owner. (§ 4.103):

B. **Formalities**

As with the premarital agreement, the partition or exchange agreement must be in writing and signed by both parties, and is enforceable without consideration (§ 4.104):

"A partition or exchange agreement under Section 4.102 or an agreement under Section 4.103 must be in writing and signed by both parties. Either agreement is enforceable without consideration."

C. **Exchange/Gift**

The partition of community property results in the creation of two separate property shares—one-half to the Wife as her sole and separate property, and one-half to the Husband as his sole and separate property. If it is the parties’ intention for one party to thereafter own 100% of an asset as his/her sole and separate property, then the parties must either exchange or gift the partitioned separate property between themselves.

For example, if Husband and Wife own a residence and a business as community property, and they wish for Husband to own the business as his separate property and Wife to own the residence as her separate property, then they may accomplish this result in a two-step process: (1) partition each community property into separate property shares, owned one-half by each party, and (2) Husband would then exchange his one-half separate property interest in the residence, for Wife’s one-half separate property interest in the business.

Alternatively, if Husband and Wife own a community property residence and they wish for Wife to own 100% of the residence as her separate property, then they must first partition the community property residence into two equal separate property shares. Husband must then take the extra step of gifting to Wife his newly partitioned separate property one-half interest in the residence.

IV. **CONSTITUTIONAL BASIS**

Since 1980, the Texas Constitution has provided that parties can partition and exchange community property, under Article XVI, § 15, which provides in part as follows:

"... provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of the other spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse...."

V. **AGREEING TO CHARACTERIZATION - WHY IS IT SO IMPORTANT?**

Family Code Section 4.003 states many reasons for parties to enter a premarital agreement. One of the most important, however, is identified in the first paragraph of the statute, as follows:

"(a) The parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located."

The beginning place to determine the rights and obligations of a party in property is the characterization of the property as either separate or community.
A. Community Property

Community property is essentially defined as property which is not separate property. Code Section 3.002 states:

"Community property consists of the property, other than separate property, acquired by either spouse during marriage."

B. Separate Property

Separate property is specifically defined under Code Section 3.001 as:

"A spouse's separate property consists of:
(1) the property owned or claimed by the spouse before marriage;
(2) the property acquired by the spouse during marriage by gift, devise, or descent; and
(3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage."

C. Community Property Presumption

Code Section 3.003 makes it more difficult to prove separate property with two important rules as follows:

"(a) Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.
(b) The degree of proof necessary to establish that property is separate property is clear and convincing evidence."

D. Division of Property on Divorce

A Texas Court has broad discretion to divide the community property on divorce in a "just and right" manner. As Code Sections 7.001 and 7.002 state:

87.001. General Rule of Property Division

"In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage."

§7.002 Division and Disposition of Certain Property Under Special Circumstances

"(a) In addition to the division of the estate of the parties required by Section 7.001, in a decree of divorce or annulment the court shall order a division of the following real and personal property, wherever situated, in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;
(1) property that was acquired by either spouse while domiciled in another state and that would have been community property if the spouse who acquired the property had been domiciled in this state at the time of the acquisition; or
(2) property that was acquired by either spouse in exchange for real or personal property and that would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.
(b) In a decree of divorce or annulment, the court shall award to a spouse the following real and personal property, wherever situated, as the separate property of the spouse:
(1) property that was acquired by the spouse while domiciled in another state and that would have been the spouse's separate property if the spouse had been domiciled in this state at the time of acquisition; or
(2) property that was acquired by the spouse in exchange for real or personal property and that would have been the spouse's separate property if the spouse had been domiciled in this state at the time of acquisition.
(c) In a decree of divorce or annulment, the court shall confirm the following as the separate property of a spouse if partitioned or exchanged by written agreement of the spouses:
(1) income and earnings from the spouses' property, wages, salaries, and other forms of compensation received on or after January 1 of the year in which the suit for dissolution of marriage was filed; or
(2) income and earnings from the spouses' property, wages, salaries, and other forms of compensation received in another year during which the spouses were married for any part of the year."

In making the division, the Court may consider many equitable factors, including:
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a. fault in the breakup of the marriage;
b. benefits the innocent spouse may have
derived from the continuation of the
marriage;
c. disparity of earning power of the
spouses and their ability to support
themselves;
d. health of the spouses;
e. the spouse to whom conservatorship of
the children is granted;
f. needs of the children of the marriage;
g. education and future employability of
the spouses;
h. community indebtedness and liabilities;
i. tax consequences of the division of
property;
j. ages of the spouses;
k. earning power, business opportunities,
capacities, and abilities of the spouses;
l. need for future support;
m. nature of the property involved in the
division;
n. wasting of community assets by the
spouses;
o. credit for temporary support paid by a
spouse;
p. community funds used to purchase out-
of-state property;
q. gifts to or by a spouse during the
marriage;
r. increase in value of separate property
through community efforts by time, talent, labor, and effort;
s. excessive community-property gifts to
the parties’ children;
t. reimbursement;
u. expected inheritance of a spouse;
v. attorney’s fees to be paid;
w. creation of community property through
the use of a spouse’s separate estate;
x. the size and nature of the separate
estates of the spouses;
y. creation of community property by the
efforts or lack thereof of the spouses;
z. actual fraud committed by a spouse;
aa. constructive fraud committed by a
spouse;
bb. length of the marriage;
cc. hiding of assets.

Murff v. Murff, 615 SW2d 696 3 (Tex. 1981)

E. Separate Property Is Indivisible On Divorce
One of the most important cases to protect
separate property on divorce was Eggemeyer v.

Eggemeyer, 554 SW2d 137 (Tex. 1977) holding that a
Texas court in a divorce case cannot take the separate
property from one spouse and award it to the other
spouse. Consequently, protection of separate property
through a pre or postmarital agreement becomes very
important.

VI. RECORDING THE AGREEMENT
Recording the pre or post-marital agreement is
not required, but, it may be helpful, as provided in Code
Section 3.004:

"(a) A subscribed and acknowledged
schedule of a spouse’s separate property
may be recorded in the deed records of
the county in which the parties, or one
of them, reside and in the county or
counties in which the real property is
located.
(b) A schedule of a spouse’s separate
real property is not constructive notice
to a good faith purchaser for value or a
creditor without actual notice unless the
instrument is acknowledged and
recorded in the deed records of the
county in which the real property is
located."

VII. GIFTS BETWEEN SPOUSES
"If one spouse makes a gift of property
to the other spouse, the gift is presumed
to include all the income and property
that may arise from that property." (§
3.005)

VIII. ENFORCEMENT
The Texas Family Code specifically provides
two defenses to enforcement of a premarital, or
partition/exchange, agreement in Sections 4.006 and
4.105, as follows:

A. Family Code Section 4.006 (For Premarital
Agreements)

"(a) A premarital agreement is not enforceable if
the party against whom enforcement is requested
proves that:
(1) the party did not sign the agreement
voluntarily; or
(2) the agreement was unconscionable
when it was signed, and, before signing
the agreement, that party:
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(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; (B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and (C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses."

B. Family Code Section 4.105 (For Partition or Exchange Agreements):

"(a) A partition or exchange agreement is not enforceable if the party against whom enforcement is requested proves that: (1) the party did not sign the agreement voluntarily; or (2) the agreement was unconscionable when it was signed and, before execution of the agreement, that party: (A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; (B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and (C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a partition or exchange agreement shall be decided by the court as a matter of law.

(c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses."

IX. WAIVER OF CLAIMS FOR REIMBURSEMENT AND ECONOMIC CONTRIBUTION

A contribution of funds or time by one estate (e.g., the separate property/community property estate) to benefit another estate (e.g., the community property/separate property estate), may create a claim for reimbursement or economic contribution to the paying estate. Claims for economic contribution are defined under Section 3.402, and claims for reimbursement are defined under Section 3.408, as follows:

A. Family Code Section 3.402 - Economic Contribution

"(a) For the purposes of this subchapter, ‘economic contribution’ is the dollar amount of:

(1) the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage; (2) the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed at the time the property was received; (3) the reduction of the principal amount of that part of a debt, including a home equity loan: (A) incurred during a marriage; (B) secured by a lien on property; and (C) incurred for the acquisition of, or for capital improvement to, property; (4) the reduction of the principal amount of that part of a debt: (A) incurred during marriage; (B) secured by a lien on property owned by a spouse; (C) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and (D) incurred for the acquisition of, or for capital improvements to, property; (5) the refinancing of the principal amount described by Subdivisions (1)-(6), to the extent the refinancing reduces that principal amount in a manner described by the appropriate subdivision; and (7) capital improvements to property other than by incurring debt.

(b) ‘Economic contribution’ does not include the dollar amount of:
(1) expenditures for ordinary maintenance and repair or for taxes, interest, insurance; or
(2) the contribution by a spouse of time, toil, talent, or effort during the marriage."

B. Family Code Section 3.408 - Claim for Reimbursement

"(a) A claim for economic contribution does not abrogate another claim for reimbursement in a factual circumstance not covered by this subchapter. In the case of a conflict between a claim for economic contribution under this subchapter and a claim for reimbursement, the claim for economic contribution, if proven, prevails.
(b) A claim for reimbursement includes:
(1) payment by one marital estate of the unsecured liabilities of another marital estate; and
(2) inadequate compensation for the time, toil, talent, and effort of a spouse by business entity under the control and direction of that spouse.
(c) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.
(d) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate on property that does not involve a claim for economic contribution to the property.
(e) The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset."

C. Family Code Section 3.409 - Nonreimbursable Claims

"The court may not recognize a marital estate’s claim for reimbursement for:
(1) the payment of child support, alimony, or spousal maintenance;
(2) the living expenses of a spouse or child of a spouse;
(3) contributions of property of a nominal value;
(4) the payment of a liability of a nominal amount; or
(5) a student loan owed by a spouse."

D. Family Code Section 3.410 - Effect of Marital Property Agreement

"A premarital or marital property agreement, whether executed before, on, or after September 1, 1999, that satisfies the requirements of Chapter 4 [Premarital and Marital Property Agreements] is effective to waive, release, assign, or partition a claim for economic contribution under this subchapter to the same extent the agreement would have been, effective to waive, release, assign, or partition a claim for reimbursement under the law as it existed immediately before September 1, 1999, unless the agreement provides otherwise."

X. CONTRACTS TO MAKE A WILL

Parties often ask if their agreements can provide provisions for a last will and testament. Code Section 4.003(a)(5) specifically states:

"(a) The parties to a premarital agreement may contract with respect to:
(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;"

In this circumstance, coordinate with Section 59A of the Texas Probate Code for compliance, which states:

"Section 59A. Contracts Concerning Succession
(a) A contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 1979, can be established only by:
(1) provisions of a written agreement that is binding and enforceable; or
(2) provisions of a will stating that a contract does exist and stating the material provisions of the contract.
(b) The execution of a joint will or reciprocal wills does not by itself suffice as evidence of the existence of a contract."
XI. OTHER CLAUSES TO CONSIDER

A. Benefits From One Spouse to Other Spouse During Marriage
   1) Cash/other property on signing
   2) Cash/other property periodically (e.g. based on number of years of marriage)
   3) Payment of living expenses (e.g. every day reasonable and necessary expenses)
   4) Gifts
   5) Cash/other property in the event of divorce or death.

B. Forfeiture of Benefits on Contest
   One practical provision to discourage a contest on divorce or death is to provide for a forfeiture of the benefits the contesting party would have otherwise received without the contest. When drafting, keep in mind that the greater the benefit to be forfeited, the greater the discouragement.

C. Termination Clause
   Parties sometimes agree that the agreement shall automatically terminate after so many years of marriage. In this event, consider provisions as to what happens to the character of the assets/debts created during the term of the agreement.

D. Waiver of Homestead Rights
   The Texas Supreme Court has ruled that parties to a premarital agreement may waive the probate homestead right of a surviving spouse provided by Article XVI, §52 of The Texas Constitution (Williams v. Williams, 569 SW2d 867, Tex. 1978).

E. Agreement of Fair and Reasonable Disclosure
   Remember that a major prong of the defense to enforcement of the agreement (Code § 4.006/4.105) is that before signing the Agreement a party was not provided a fair and reasonable disclosure of the property or financial obligations of the other party. Consequently, an acknowledgment of such fair and reasonable disclosure will be a major argument to eliminate the defense.

F. Prior Written Waiver of Disclosure
   Similarly, a written waiver of disclosure of the other party’s property or financial obligations executed prior to the signing of the pre or post-marital agreement, arguably eliminates the defense to enforcement under Code Sections 4.006/4.105. (See Exhibit A Form)

G. No Community Property
   If the parties agree that there will be no community property created during the marriage, then their agreement should clearly so state.

H. Post-Marital Confirmation Agreement
   An agreement after marriage confirming the premarital agreement presents a very strong argument for enforcement. (See Exhibit C Form)

I. Choice of Law - Where and When
   Parties should consider incorporation of a choice of law provision in the event of interpretation or enforcement issues—for example, the laws of the State of Texas existing as of the execution date of the agreement will control, to be applied by an agreed choice of jurisdiction of Texas.

J. Assuring Certification
   An attorney certification is a strong deterrent to the involuntary defense. (See Exhibit B Form)

   Consider income tax provisions for reporting purposes, payment of tax liabilities, allocation of credits and other tax benefits (e.g. carry-overs), allocation of withholdings and estimated tax payments, and utilization of income/deduction partitions under Code Section 7.002(c).
   Consider gift tax provisions for reporting purposes, payment of tax liabilities, and utilization of joint gift provisions.

L. Joint Accounts
   Clearly state how joint accounts will operate - i.e. when and how funding will take place, the characterization of the account and assets purchased with funds from the account.

M. Retirement Accounts
   Clearly identify retirement accounts and state the parties’ intent as to characterization, with an agreement to later sign documents required and necessary to effectuate the parties’ agreements (i.e. documents required/allowed by ERISA).

N. Further Provisions On Divorce
   1. Agreement of Disposition of property on divorce (§4.003(a)(3))
   2. Modification/elimination of spousal support during and after divorce (§4.003(a)(4))
   3. Allocation/waiver of interim/final attorney fees and litigation expenses.
O. Life Insurance
Consider life insurance as a practical and inexpensive asset for the other spouse.

XII. COHABITATION AGREEMENTS
Cohabitation agreements are not addressed in the Texas Family Code. The Family Code does, however, consider cohabitation as one “prong” of a three-prong test for proof of a “common law marriage” under Code Section 2.401, as follows:

"(a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:
   (1) a declaration of their marriage has been signed as provided by this subchapter; or
   (2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

(b) If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married.

(c) A person under 18 years of age may not:
   (1) be a party to an informal marriage; or
   (2) execute a declaration of informal marriage under Section 2.402.

(d) A person may not be a party to an informal marriage or execute a declaration of an informal marriage if the person is presently married to a person who is not the other party to the informal marriage or declaration of an informal marriage, as applicable."

Consequently, if parties cohabit, a Cohabitation Agreement should be recommended to clearly set forth the parties’ intent, especially in light of Family Code Section 2.401.
(See Exhibit E Form)

Cohabitation is also addressed in the Court Ordered Maintenance (Alimony) provisions of the Family Code as follows:

A. Family Code Section 8.061:

"An order for maintenance is not authorized between unmarried cohabitants under any circumstances."

B. Family Code Section 8.056:

"(a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the obligee."
EXHIBIT A

AGREEMENT REGARDING DISCLOSURE OF PROPERTY AND FINANCIAL OBLIGATIONS, AND VOLUNTARY WAIVER OF RIGHT TO FURTHER DISCLOSURE OF PROPERTY OR FINANCIAL OBLIGATIONS

This Agreement Regarding Disclosure of Property and Financial Objections, and Voluntary Waiver of Right to Further Disclosure of Property or Financial Obligations is executed this________ ______, 2008, by ____________ ("Ms. _______________ ").

Ms. __________ intends to enter into an Agreement in Contemplation of Marriage with __________ ("Mr. __________ ") defining each of their property rights subsequent to their marriage. This Agreement Regarding Disclosure of Property and Financial Objections, and Voluntary Waiver of Right to Further Disclosure of Property or Financial Obligations is being executed prior to the execution of the Parties' Agreement in Contemplation of Marriage.

Ms. __________ agrees that she has been informed of the facts relating to the subject matter of the Agreement in Contemplation of Marriage between the Parties, and is fairly and reasonably informed as to the property and financial obligations of each Party, and as to the rights and obligations of both Parties. Further, Ms. __________ represents and agrees that she has been provided a fair and reasonable disclosure of the property and financial obligations of Mr. __________, and that she has an adequate knowledge of the property and financial obligations of Mr. __________.

Ms. __________ represents and agrees that she has also been offered an opportunity of further investigation of the property, including its value, and the financial obligations of Mr. __________, and that she has undertaken such investigation to her satisfaction. Further, Ms. __________ hereby voluntarily and expressly gives up, releases, and waives any right she has to disclosure of the property and financial obligations of Mr. __________ beyond the disclosure previously provided her.

Date: ______________________, 2008.

________________________________________

APPROVED AS TO FORM

________________________________________

Attorney for __________

________________________________________

Attorney for __________
STATE OF TEXAS  §
COUNTY OF DALLAS  §

This instrument was acknowledged before me on __________________________, 2008, by __________________________.

__________________________
Notary Public, State of Texas
EXHIBIT B

ATTORNEY'S CERTIFICATION

I, ______________, do hereby certify that I am an Attorney at Law duly licensed and admitted to practice in the State of Texas; that I have been employed by ______________, one of the Parties to the foregoing Agreement; that I have advised and consulted with ______________ in connection with his property rights and have fully explained to him the legal effect of the foregoing Agreement and the effect which it has upon his rights otherwise obtained as a matter of law; that I have consulted with ______________ in the negotiations regarding the material terms and conditions of this Agreement; that ______________, after being fully advised by me, acknowledged to me that he understood the subject matter and the legal effect of the foregoing Agreement and ______________ did desire to and did hereby execute the Agreement freely and voluntarily.

_____________________________________
Texas Bar No. ________

ATTORNEY FOR ______________
EXHIBIT C

PROPERTY AGREEMENT BETWEEN SPOUSES

This Property Agreement Between Spouses made by ____________, of Dallas County, Texas, hereinafter referred to as "Mr. _____", and ______________, of Dallas County, Texas, hereinafter referred to as "Ms. ______", is entered into in accordance with the Agreement In Contemplation of Marriage which was previously entered into by the spouses, and to which this agreement is attached.

WHEREAS, Ms. ______ and Mr. _____ were recently married on ______________;

WHEREAS, Ms. ______ and Mr. _____ presently own and possess real and personal property in his or her separate right, some of which is described on Exhibits A and B of the aforementioned Agreement In Contemplation of Marriage. Exhibit A contains a description of some of the properties owned at the time of marriage by Ms. ______ as her sole and separate estate, as well as her debts and obligations, and Exhibit B contains a description of some of the properties owned at the time of marriage by Mr. _____ as his sole and separate estate, as well as his debts and obligations; and

WHEREAS, Ms. ______ and Mr. _____ desire to ratify their Agreement In Contemplation of Marriage.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to the Agreement In Contemplation of Marriage previously entered into between Ms. ______ and Mr. _____, Ms. ______ and Mr. _____ agree as follows:

SECTION I

RESTATEMENT AND RATIFICATION OF AGREEMENT IN CONTEMPLATION OF MARRIAGE

This Property Agreement Between Spouses, as well as being a contract in its own right, shall be considered to be and is a restatement and ratification of the Agreement In Contemplation of Marriage previously executed by Ms. ______ and Mr. _____ before their marriage. Therefore, the Parties hereto do hereby restate, agree to, confirm and ratify, all provisions of the Agreement in Contemplation of Marriage entered into by the Parties on ________________, and do hereby incorporate all terms and provisions of such Agreement in Contemplation of Marriage into this Property Agreement Between Spouses.

SECTION II

NO ADVICE FROM OTHER PARTY OR OTHER PARTY'S ATTORNEY

The attorney advising Ms. ______ in connection with this Agreement is ______________. The attorney advising Mr. _____ in connection with this agreement is _________________. Ms. ______ has not received any legal, financial or other kind of advice from Mr. _____ or from his attorney in connection with the advisability or nonadvisability of entering into this Agreement. Mr. _____ has not received any legal, financial or other kind of advice from Ms. ______ or from her attorney in connection with the advisability or nonadvisability of entering into this Agreement.
SECTION III

WARNING

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE PERMANENTLY SURRENDERS RIGHTS HE OR SHE OTHERWISE WOULD HAVE UNDER TEXAS LAW (AND ALSO UNDER THE LAW OF OTHER JURISDICTIONS) TO PERSONAL SERVICE INCOME, INCOME FROM SEPARATE PROPERTY, AND OTHER INCOME AND PROPERTY, REAL AND/OR PERSONAL AND/OR MIXED.

EXECUTED in duplicate on the date and at the time indicated in our acknowledgments.

______________________________ _________________________________
______________, Wife ____________, Husband

APPROVED AS TO FORM ONLY:

______________________________ _________________________________
______________________________ _________________________________
______________________________ _________________________________
Texas Bar No. Texas Bar No. Texas Bar No.

Attorney for Wife Attorney for Husband

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority on this date personally appeared ______________, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that she executed the same for the purposes and consideration therein expressed. ______________ also swore under oath that the statements of her intent contained in the main body of the foregoing agreement are true.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on ______________, 2008.

______________________________
Notary Public, State of Texas
BEFORE ME, the undersigned authority on this date personally appeared ____________, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed. ____________ also swore under oath that the statements of his intent contained in the main body of the foregoing agreement are true.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on __________________, 2008.

Notary Public, State of Texas
EXHIBIT D

STIPULATIONS TO PRENUPTIAL AGREEMENT

A. The Parties intend to be married subsequent to the execution of this Agreement.

B. The Parties intend, desire, and agree as follows: to define that property that each Party brings to the marriage, to define the characterization of such property as the separate property of the respective Party, and to set apart said property as the separate property of the respective Party.

C. The Parties further intend, desire, and agree as follows: to define those financial obligations that each Party brings to the marriage, to define the characterization of such financial obligations as the separate financial obligations of the respective Party, and to set apart said financial obligations as the separate financial obligations of the respective Party.

D. For various tax and non-tax reasons, the Parties desire and agree to negotiate for and make reasonable and sufficient provision for each other in this Agreement, in consideration of the release of and in full satisfaction of all rights which, after the solemnization of their marriage, the Parties (and/or their respective estate) might or could have, by reason of the marriage, in the property which each now has, or may hereafter acquire, and the financial obligations each may now have, or hereafter incur.

E. The Parties further intend, desire and agree to fix and determine by this prenuptial agreement the rights and claims that will accrue to each of them, and/or their respective estate, in the estate and property of the other by reason of their marriage, and intend, desire and agree to accept the provisions of this Agreement in lieu of and in full discharge, settlement and satisfaction of any other rights and/or claims either Party, and/or their respective estate, might otherwise have, but for this Agreement.

In this respect, the Parties intend, desire, and agree as follows: to define that property that each Party shall hold and/or acquire after the marriage, and to define the characterization of such property.

Further, in this respect, the Parties intend, desire, and agree as follows: to define those financial obligations that each Party shall have or shall incur after the marriage, and to define the characterization of such financial obligations as the separate financial obligations of the respective Party.
The Parties further intend, desire, and agree that no community property be created as a result of their marriage, or during their marriage, and that all property acquired by a respective Party during the marriage be the separate property of such Party in accordance of the terms and provisions of this Agreement.

F. The Parties further intend, desire, and agree to fix and determine by this Agreement the disposition of each Party's respective separate property, as so defined in this Agreement, in the event of separation, marital dissolution, death, or on the occurrence or non-occurrence of such other events as provided in this Agreement.

G. ________ has made a fair and reasonable disclosure of her property, and has made a fair and reasonable disclosure of her financial obligations. ________ acknowledges and agrees that income tax returns and documentation, and other financial information disclosing the property and financial obligations of ________ have been disclosed and provided to him.

H. ________ has made a fair and reasonable disclosure of his property, and has made a fair and reasonable disclosure of his financial obligations. ________ acknowledges and agrees that income tax returns and documentation, and other financial information disclosing the property and financial obligations of ________ have been disclosed and provided to her.

I. Each Party agrees that he/she has been provided fair and reasonable disclosure of the property and financial obligations of the other Party. Further, each Party agrees that he/she has an adequate knowledge of the property and financial obligations of the other Party. The Parties to this Agreement understand that the figures and amounts set forth in the attached Exhibits "A" and "B" are approximately correct and not necessarily exact, but are intended to be reasonably accurate. EACH PARTY AGREES AND ACCEPTS THAT NEITHER PARTY HAS PURPOSELY OMITTED DISCLOSURE OF ANY PROPERTY OR FINANCIAL OBLIGATIONS. EACH PARTY VOLUNTARILY, AND EXPRESSLY WAIVES ANY RIGHT TO DISCLOSURE OF ANY PROPERTY OR FINANCIAL OBLIGATIONS OF THE OTHER PARTY BEYOND THE DISCLOSURE SO PROVIDED IN THIS AGREEMENT.

J. The Parties enter into this Agreement in consideration of their marriage, and in consideration of the mutual promises, undertakings and benefits to each Party set forth in this Agreement. The effectiveness of this Agreement is expressly conditioned on the occurrence of such marriage. If, for any reason, the marriage does not take place, this Agreement will be of no force and effect.
K. __________ admits and acknowledges that each Party has been represented by independent legal counsel to aid them in the negotiation and preparation of this Agreement. __________ expressly acknowledges that she freely chose ______________________________, to act as her own legal counsel, that she has read this Agreement, and that _________ has explained to her the meaning and legal consequences of this Agreement.

L. __________ admits and acknowledges that each Party has been represented by independent legal counsel in the negotiation and preparation of this Agreement. __________ expressly acknowledges that he freely chose ______________________________, to act as his own legal counsel, that he has read this Agreement, and that _________ has explained to him the meaning and legal consequences of this Agreement.

M. In consideration, therefore, of the marriage of the Parties and of the mutual promises, undertakings and benefits to each Party set forth in this Agreement, the Parties hereby freely and openly enter into this Agreement on the following terms and conditions.
EXHIBIT E

STIPULATIONS TO COHABITATION AGREEMENT

1. The Parties began living together in the same residence at _______________, in approximately ___________, and intend to continue this living arrangement. The Parties agree that they have not lived together as husband and wife, are not currently living together as husband and wife, and in the future do not intend to live together as husband and wife.

2. Each Party is an unmarried person and a permanent resident of Texas. Neither Party has entered into or executed a declaration of marriage to the other Party. Neither Party has participated in a ceremonial marriage with the other Party.

3. Neither Party has held himself or herself out as married to the other Party or as the other Party's spouse. Neither Party will hold himself or herself out as married to the other Party or as the other Party's spouse. The Parties are not married as of the date of this Agreement, and they have not agreed to marry at some future date. Neither Party has promised to marry the other Party, now or in the future. The Parties agree that they will not do any act or cause any result that could be interpreted as creating a "common-law marriage" or an "informal marriage" as defined in sections 2.401 and 2.402 of the Texas Family Code and cases construing those statutes. The Parties therefore agree that any subsequent marriage between them must be a formal ceremonial marriage, and any such marriage will affect this Agreement only as provided in paragraph 1.1 below.

4. Neither Party is relying on representations made by the other Party about financial matters of any kind, other than the representations stated in this Agreement.

5. As of the date of this Agreement, the Parties do not jointly own, legally or equitably, any property or property rights, nor does any sort of partnership exist between the Parties. Each Party agrees that he/she does not own, nor have any claim or right relating to, any property or property right of the other Party.

6. The Parties intend by this Agreement to define their property rights with one another, and they intend that this Agreement supersede any rights either may have under case law of any state or any statutory law, presently existing or that may be subsequently enacted, defining the rights and duties of unmarried persons living together.