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THE LAW OFFICE OF ROBERT J. SPAVENTO

An Informational Guide to:

Prenuptial Agreements;
Purchasing or Refinancing a Home;
Estate Planning;
Consumer Rights and Remedies;
Automobile Accidents; and
Small Business Development

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WHY DO I NEED A PRENUPTIAL AGREEMENT?

Many people seem very hesitant to even discuss the concept of a prenuptial agreement. While the topic can be difficult and possibly a little awkward, as adults you should be able to have a conversation with your future spouse about considering a prenuptial.

You might be thinking, I'm not a millionaire or I don't have a lot of stuff, why do I need to have one? Here are a *few* reasons to have a prenuptial agreement:

- Helps to reduce court time in discussions of many different issues;
- Assists in dividing property in the event of divorce;
- Provide for alimony to your spouse;
- Divide assets (both before and during marriage) such as; real estate, personal property, businesses, trusts, etc.;
- An opportunity to discuss the personal debt of each spouse prior to marriage; how will this debt be handled should the marriage dissolve?;
- Discuss a spouse's rights (if any) to retirement benefits;
- Determine a potential inheritance;
- Opportunity to discuss a child's last name;
- Spells out how to handle children from a previous marriage;
- A prenuptial agreement can last indefinitely or for a specific time frame;
- A prenuptial agreement helps create a peace of mind.

A FEW THINGS TO CONSIDER WHEN PURCHASING A HOME

1. Decide what you can afford and stick to it.
2. Go to a bank and apply for a pre-approval letter, federal truth in lending and a good faith estimate.
3. Contact a real estate agent you trust and will work both *with* you and *for* you.
 - After you find a home you are interested in, make an offer to purchase in writing. Hire your own attorney to assist in drafting this. And keep track of all dates!
 - **Everything** must be in writing – even if it's something as small as the drapes.
 - Consider the following; does it include:
 - Parking – be very specific – are there any fees?
 - Fixtures / appliances – take pictures and list the exact make and model.
 - Closing costs – will the seller pay some?
 - Are there other conditions to be added? (This is why an attorney is necessary at this stage.)
4. Hire an insured and licensed home inspector.
 - Do this immediately. Ask questions of the inspector--what will / won't they do? How many times will they go back? If they have to go back to inspect again – who will pay?
 - Go to the home with them.
 - Get everything in writing.
5. At this point, if you are satisfied, consider entering into a *Purchase and Sales Agreement* (P&S).
 - Don't just rely on the bank's attorney. You should have your own attorney draft and negotiate this.
 - What conditions should be in the P&S?
 - This could be the last chance to protect both your deposit and your ability to walk away from the home.
 - As always, keep track of all dates!
6. Obtain insurance for the home.
 - Different insurance for both residential and condominiums.
 - Is it in a flood zone?
 - Do you have enough insurance to protect your assets?
7. Your bank should be looking for the P&S and insurance.
 - Get your commitment letter to lock in your interest rate.
 - Have you satisfied all your conditions?
 - Contact your attorney of any changes. (Keep track of the commitment date!)

8. Before you go to the closing, schedule a final walk through – note any changes and/or missing items.
9. Go to your closing and be prepared to sign – a lot!
 - Review all documents – especially the Housing and Urban Development (HUD) Settlement Statement.
 - Ask your lawyer to explain anything you don't understand (otherwise you could be stuck with it for 30 years or more).
 - Make sure you receive copies.
10. Once your home has been recorded:
 - Call your movers (and your lucky family and friends).
 - Make sure all the utilities are up and running.

FREQUENTLY ASKED QUESTIONS WHEN PURCHASING A HOME

Homestead Information

Q. What is a Declaration of Homestead, and why is it important?

A. It protects your home from creditors. A type of protection from *unsecured creditors* of up to \$500,000.00. The homestead estate is exempt from attachment, execution or forced sale for payment of “non-exempted” debts.

Q. Do I still need insurance if I file a Declaration of Homestead?

A. Yes! In fact your bank will require you to have homeowner's insurance. The Homestead is **not** insurance but protects you from **some** forced sales of your home due to **some** unsecured debts.

Q. What if I am disabled and/or elderly?

A. You may be entitled to more coverage, but additional documents may have to be recorded.

Q. Is this expensive?

A. No, it is usually around \$35 to file it.

Title Insurance

Q. What is Title Insurance?

A. According to Massachusetts Courts, “a title insurance policy provides protection against defects in, or liens or encumbrances on title. Title insurance is neither an agreement to guarantee the state of title, nor a representation of title, but is more in the nature of a covenant of warranty against encumbrances.” ***In other words*** - It could help you and/or your lender bank from loss of property should property ownership be in dispute.

Q. Can you explain that in English?

A. First, a title insurance policy looks backwards as opposed to home insurance, which looks forward. The title insurance insures against loss or damage incurred after the date of policy, **but** that loss or damage must result from covered matters that had occurred on or before the date of policy.

Q. *How does this begin?*

A. The bank's attorney or an experience title examiner will go to the registry of deeds, which is located where you are purchasing your home. They will then research and make sure everything is "on the up and up". They look at things such as; making sure all prior mortgages are paid off; a chain of title is not missing any parties, if there are any easements and so forth.

Q. *I noticed that I am already being charged for a Lender's Insurance Policy, what is that and is that enough?*

A. Lender's Insurance **protects the bank** against any loss that might occur due to unknown title defects. It guarantees the lender to have first priority lien position. Note this **does not** protect you.

Q. *Okay, if it does not protect me, what do I need?*

A. You should consider Owner's Title Insurance. This protects you, the homebuyer, if an issue occurs after the sale of property. For example you may be protected against losses from prior liens, it states you have legal access (there are exceptions), you are the owner of the property, and that a later buyer does not reject your title because it is unmarketable.

Attorney Information

Q. *Do I really need an attorney?*

A. Yes! Have you ever read a purchase and sales agreement or a mortgage – they are confusing.

Q. *I am purchasing a new home and the bank states I can use their attorney. Is that enough?*

A. I would recommend you hire your own attorney. You must ask yourself, is the bank attorney going to help negotiate my purchase and sales agreement, make sure all the necessary documents and/or certifications are correct, or is the bank's attorney simply working for the bank? This is probably the biggest purchase of your life; you should have your own attorney who will help you along the way and advocate for your interests.

Q. *The bank's attorney stated he could represent the bank and myself. Is that okay?*

A. It can be, but be sure to be clear on what the attorney will do and what the costs will be.

Is There Anything Else I Should Know?

Yes! Here are a few checkpoints/considerations as you embark on this journey:

- Request your bank use your attorney as the bank's attorney to handle the closing – some attorneys give a discount if you have the attorney perform both roles.
- Consider hiring an attorney at the *Offer to Purchase* stage – help protect your money.
- Ask your attorney (or the bank's attorney) if there are any discounts if you purchase an Owner's Title Policy.
- What is included in the closing costs?
- Who are you buying this house with and are there consequences if you are not married?

- What are the consequences if you want to sell my current home and move into my new home on the same day?
- Do you have a back up plan if the seller has to clear title and delay the closing?
- If considering purchasing a condominium ask: what do you actually own? What can you add? Who does what?
- Does the home have a septic tank? If so, when was it last inspected?
- Are there any zoning issues? What if you want to add on but you find out you cannot?
- Are there any missing permits?
- When does your home insurance begin? How much does it cover?

THE IMPORTANCE OF HAVING A WILL

I know I need to have a will, but I keep putting it off. Why should I be concerned?

Here are a few reasons to have a will:

- Without a will, the state could receive your property upon your passing;
- Beneficiaries do not have to be loved ones or close friends—you can make arrangements to give to a favorite charity, alma mater or the like; *and*
- Your property may be tied up in court, leaving loved ones with the headache of determining who receives what (and perhaps challenging relationships in the process).

I already have a will. How does this apply to me?

If you have already created a will, you should **review it every three to five years**. Doing so allows you to make sure it still accomplishes your desires. However, it may be necessary to review it even **more frequently** if:

- You have married, divorced, separated, or remarried;
- Your family has grown—either a child or grandchild;
- Whomever is named as the personal representative or guardian (previously known as the “Executor”) becomes ill or passes;
- You have changed domicile (where you live);
- There is a change in tax laws;
- Your assets have increased or decreased in value; *or*
- Your relationship with a beneficiary has changed or a beneficiary’s needs have changed.

A will can be changed, revoked, or replaced **by a new will** at any time, so long as you are competent and it follows all the rules and regulations of a valid will.

Are there any other documents that I should know about? If so, what are they?

- *Healthcare Proxies* – These persons assist in making health care decisions because you are incapacitated.
- *Power of Attorney* – This person makes financial decisions and handles property upon your passing.
- *Trusts* – These appoint beneficiaries to take care of children, grandchildren and even pets!

A CONSUMER'S CHECKLIST FOR PROTECTING YOUR RIGHTS

(Suggestions for Protecting Your Purchases and Identification)

When buying a product / service (for example signing a lease agreement) consider the following:

- Avoid making decisions under stress.
- Avoid signing something that has incomplete information.
- Keep records of with whom you spoke, including their full name and the date and time of any conversations.
- Keep this in mind – “If it’s seems too good to be true, it probably is.”
- Never, Ever, Ever sign something you don’t know the meaning of!
- For example, you may be thinking you are refinancing your home to avoid foreclosure, but in reality you might have signed over a deed giving them title to your home.
- Internet - Is it a trusted website? Don’t just look at customer reviews – who knows who wrote them.
- Be wary of giving out personal information.
- Use shredders. No shredder available? Many cities offer events in which you can bring personal documents to be shredded for you at no cost. A pair of scissors can also suffice.
- Keep your passwords private. If you receive an email regarding a company needing your password it is probably a scam. Delete it.
- When making a purchase ask if an email receipt is available. Keep all warranty and any contract information.

Problems with paying a debt, e.g. credit cards

- Don’t ignore bills! Call someone immediately and explain to them your situation. AND be wary of companies offering to “wipe out your debt”.
- Don’t ignore your letters stating a credit card company is going to sue you to recover money. Contact an attorney immediately. If you fail to do so you could lose defenses and cost you even more money, such as interest and court costs.

Warranties

- Ask – What do they cover, Who covers them, Where are they accepted? Who pays the claim – does the warranty company? Do you have to pay and wait to be reimbursed? If so – how long do you have to wait?
- Are the parts new, used, remanufactured or aftermarket?

HOW TO HANDLE DEBT COLLECTION AGENCIES

You have received a letter from a debt collector alleging you owe money. There are a few questions you need to consider:

- Are you a victim of identity (ID) theft?
- Are you the person who is alleged to owing the debt?
- Are you going to be proactive or simply throw it in the trash? (Not recommended.)
- How are you going to respond it if you don't believe you owe it?

If you believe you are a victim of Identity Theft, act immediately!

1. Go to the police station and file a report. Make copies and give them to your creditors and the credit bureau.
2. Complete the FTC Fraud Affidavit.
3. Complete the US Postal Service Fraud Complaint.
4. Complete the US Postal Inspection Form.

Not ID Theft? What's the next course of action?

- Do they have the correct person? If yes, how will you respond? (Recommendation: avoid simply throwing the letter(s) away.)
- Keep records of with whom you spoke, including: dates, times, names, and phone numbers.
- If you receive a complaint in the mail stating they are going to sue you – respond! *Did you know that if you don't respond and don't go to court they could automatically win?*

What happens if I don't show up to court on my trial date?

- You could be defaulted and automatically lose!
- Your wages could be attached, as well as your home.
- Your vehicle could be repossessed.
- Once a judgment is entered they have 20 years to collect it!

Do I have any rights?

- You can try to negotiate for a lower amount.
- You can make them prove the debt.

What If I Am Receiving Phone Calls From Debt Collectors?

- Get as much information from them as possible – representative name, company, alleged debt owed, how they got your phone number.
- Keep track of the date and time they call as they could be violating federal law and/or state law.
- Demand they stop calling you and refrain from calling you at work.
- Always be wary of giving any of your information to someone over the phone, it could be a scam.

CONSUMER RIGHTS & USED VEHICLES

Are you considering purchasing a used vehicle? If so, here are some things you should consider as a consumer.

- How will you pay for it? If you are going to make the purchase with cash make sure to request and receive a receipt.
- Consider asking friends and family if they are familiar with the company selling you the vehicle. What is their reputation?
- Consider demanding a CARFAX.
- Ask about the warranty—is one available? Make sure you receive a copy of it and any other paperwork associated with the vehicle.

I have purchased the vehicle, now what?

- Get an inspection sticker immediately.
- You might want to consider bringing it to another shop to perform the inspection.
- If it fails inspection, make sure you get a printout of why it failed, what needs to be repaired, and the estimated costs associated with the necessary repairs.
- Demand the seller fix it or return your money.

My vehicle passed inspection, but it keeps breaking down. What do I do?

- Are you still within your warranty? If yes, bring it back to the shop immediately.
- Demand a print out of what was wrong and what they fixed. They must provide you with one. Keep a record of all repairs performed.
- Has your vehicle been in the shop at least three times and / or out of service for 10 business days? If so you might be able to demand it fixed or a return of your money.

What else should I do?

Keep accurate records of everything. Make sure you get receipts and most importantly do all of this immediately, as time is of the essence. If you wait too long, you could lose rights you may have had as a consumer.

AUTOMOBILE ACCIDENT PACKET

(Keep in you car in case of an accident)

Other vehicle's information:

Their name(s): _____

Address: _____

Phone number: _____

Other passengers: _____

Vehicle make: _____

Model: _____

Year: _____

Color: _____

License plate number: _____

Insurance Carrier: _____

Agent: _____

Phone number: _____

Accident information: _____

Day, date and time: _____

Road you were on: _____

Intersecting road: _____

Landmarks: _____

Speed limit: _____

Direction you were traveling: _____

Direction other driver traveled: _____

Lighting / visibility: _____

Weather conditions: _____

Road hazards: _____

Diagram the accident:

Notes:

AUTOMOBILE ACCIDENT CHECKLIST

At the accident

1. Stay at the scene.
2. Check on all drivers and passengers.
3. Call the police.
4. Exchange information.
5. Talk to witnesses; get any information you can.
6. Take pictures; make sure to take pictures of all vehicles.

After the accident:

1. Obtain a police report.
2. Call your insurance company: Did you have any injuries? If so, what are they and do you need treatment, make sure you keep up with everything.
3. Keep track of all your injuries and keep receipts. You may want to start a journal to keep track of everything. Make sure you tell your doctor and attorney if anything changes.
4. Keep track of any lost wages and out of pocket expenses, make sure to keep receipts.
5. Get estimates on any property damage; you may want multiple estimates.
6. Be careful when discussing the incident; be wary of admitting liability and what you say. Don't post anything on social media websites or tell anyone what might have happened, they might take something out of context.
7. Be wary of early settlement offers.
8. Call an attorney as early as possible to protect your rights as you only have so much time to file a claim.

SMALL BUSINESSES

Corporations, Partnerships, Limited Liability Companies & Sole Proprietors (Oh My!)

When you decide to open your own business there are many things to consider such as:

- How will you finance it?
- Do you have a “rainy day fund”?
- Do you have enough insurance and what does it cover?
- How will you deal with hiring employees?
- Will you have an employee handbook?
- How will you deal with issues involving employees?
- What type of entity will you create?
- How will you limit your liability?
- How much time can you dedicate to running all the aspects of the business?
- How will you deal with tax consequences?
- How will you deal with potential lawsuits?
- Are you good at bookkeeping? If not, who will do this for your company?
- How will you issue stock?
- Who will oversee the business?
- What happens if you sell someone something and they refuse to pay?
- Are you aware if any documents must be sent in to the Massachusetts Corporations Department?
- Who will file all the documents for the Massachusetts Corporations Department?

As you can see there are many issues to consider **before** “opening your doors”. Please contact Attorney Robert Spavento to discuss more about opening your business.