

Tom's Top Tips for International Prenuptial Agreements

**By Thomas J. Sasser
Sasser, Cestero & Sasser, P.A.
1800 Australian Avenue South, Suite 203
West Palm Beach, Florida 33409
(561) 689-4378
tomsasser@sasserlaw.com**

BIOGRAPHY
THOMAS J. SASSER

Thomas J. Sasser is the managing partner of the law firm of Sasser, Cestero & Sasser, P.A., which is located in West Palm Beach, Florida. He is Board Certified in Marital and Family Law. Mr. Sasser is a Fellow of the American Academy of Matrimonial Lawyers (“AAML”) and the International Academy of Family Lawyers (“IAFL”). He is a Diplomate of the American College of Family Law Trial Lawyers. He received his J.D. in 1995 from The University of Florida and his B.A. in 1992 from The College of William and Mary in Williamsburg, Virginia. He is a past Chair of the Family Law Section of The Florida Bar. In addition, he is a four-time past chair of the Florida Bar Marital and Family Law Board Certification Review Course. He is a past President of the Florida Chapter of the AAML and serves as Vice President of the AAML. He also is the Treasurer of the IAFL and has served on the Board of the United States Chapter of the IAFL. He served as the chair of the Palm Beach County Bar Association Family Law Practice Committee from 2003 - 2008. Mr. Sasser is the author of several articles for the Family Law Section Commentator and The Florida Bar Journal. He often lectures for the Palm Beach County Bar Association, The Florida Bar Family Law Section, the AAML and the IAFL.

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1. Identify Potentially Important Jurisdictions Immediately
As soon as you are able to do so and ideally at the initial consultation, identify all potentially relevant jurisdictions. These include jurisdictions where 1) the parties have homes or real property interests, 2) where the parties intend to reside immediately after marriage, 3) where the parties might need to live for employment, and 4) where they would like to live in the future, particularly for retirement.
2. Get Paid
One of the riskiest types of work that family lawyers do is drafting/negotiating premarital agreements. Do not take the risk without reward. Have a paid initial consultation before you agree to take on a premarital agreement drafting assignment. Charge a minimum non-refundable fee, but provide for an hourly charge if the hours expended exceed the minimum fee amount. Get paid upfront.
3. No Last Minute Agreements
Avoid any agreements that will be signed less than thirty days before the marriage. Ideally, begin negotiating any premarital agreement six months or more before planned execution. Use a backdate calendar to keep the drafting negotiation and execution on track.
4. Require Opposing Counsel/Do Not Select or Recommend Counsel
Do not engage in negotiations with a pro se party. Absolutely and unequivocally insist that the both parties engage counsel. However, do not recommend or select counsel for the opposing party.
5. Contact/Hire Qualified Counsel in Potentially Relevant Jurisdictions
After you have identified potentially important jurisdictions, contact counsel in those jurisdictions to ascertain if there are any unique legal issues, particularly, public policy concerns, that might impact the agreement that you are drafting. To the extent possible, have counsel from the potentially relevant jurisdictions review the agreement just to make sure that no issues or problems have been missed.
6. Carefully Consider Choice of Laws
While the law selected for the purposes of determining validity and enforceability of a premarital agreement will generally be the law of the jurisdiction where the drafter practices, you should consider whether the law of some other jurisdiction would be more favorable to your client. However, be extraordinarily careful about drafting an agreement that will be governed by the laws of a jurisdiction other than the

jurisdiction where you are licensed to practice. Your malpractice insurer may not cover such work.

7. Give Extremely Accurate Financial Disclosure and Over-Disclose Financial Information
Just as you can never be too beautiful, too thin, or too young, you can never truly over-disclose financial information. Give the other side more information than they could ever truly need to evaluate the agreement. Provide supporting documents for net worth and income summaries. Make sure that the financial disclosure is accurate and detailed and to the extent that there are estimates, always over estimate the value or amount. Do not forget to include an income statement along with a net worth statement.
8. Translate Everything that is Significant
If there is any uncertainty as to absolute and complete fluency of counsel and both parties in the language in which the agreement is drafted, have all critical documents translated by a certified translator. Do not rely on non-professionals to translate. Have a translator at the signing ceremony as well.
9. Avoid Mirror/Ancillary Agreements if Possible
While perspectives on mirror and ancillary agreements can vary, I strongly recommend against such agreements. These documents can introduce conflicts and inconsistencies that can lead to invalidity. Premarital agreements are designed to provide certainty and anything that increases or creates uncertainty should be avoided. The existence of mirror agreements can create jurisdictional fights.
10. Include a Clause that Requires the Parties to Confer with Counsel Before Relocating
Within the agreement, include language that states where the parties intend to reside after the marriage and then provide that if either or both of the parties intend to change the state or country of residence, that neither party will do so until after they have consulted with counsel and executed a post-nuptial agreement, or addendum to the premarital agreement, that provides for the same substantive terms, and which will be enforceable in the new jurisdiction. You may also consider requiring the execution of a ratification and/or statement of validity and enforceability in the new jurisdiction.
11. Consider and Acceptance of the Benefits Clause/Payment
A frequently overlooked common law contract defense is acceptance of the benefits. This underutilized concept prevents a party from disclaiming the validity of a contract if he or she has accepted the benefits of that contract. Have your client make a payment to his or her prospective spouse at the time of the execution of the agreement. If the party subsequently attempts to attack the agreement, introduce the evidence that he or she has already accepted the benefits of the contract and thus, cannot challenge validity.

12. Require Two Witnesses and a Notary for The Execution (Possible Contract Under Seal)
To avoid claims of duress, coercion, undue influence and the like, always have two friendly witnesses and a notary at the execution of the agreement. The addition of these people makes the process more formal and adds a layer of protection. These witness will be a source of evidence in the event there is a challenge to the agreement.
13. Video Record and Stenographically Record the Signing Ceremony
Hire a videographer and court reporter for the signing ceremony. The court reporter should swear the parties and you should conduct an inquiry under oath of the parties concerning the circumstances surrounding the drafting, negotiation and execution of the agreement. Ask questions of both parties, but do not ask questions that waive attorney/client privilege. Do not be afraid to call off the execution if either party acts inappropriately at the signing ceremony. After the agreement is signed, order the transcript and video. Make copies and give your client a package which includes the agreement, the video and transcript. Keep at least one copy of the full packet for yourself.
14. Signing Letter to Client along with Final Review
Prepare a signing letter which your client will sign after the final review of the agreement, but before the signing ceremony. Make your client read the agreement on the day of the signing and then sit with him or her and go over each section of the agreement, at least generally. The letter should warn the client about the things that he or she should do or not do to protect the assets and income despite what the agreement says. It should also address any compromises that have been made or protections that have been dropped against the advice of counsel. The letter should advise the client not to move or relocate without seeking advice of counsel first and should also remind the client to get waivers, such as waivers as to beneficiary interest in retirement plans signed after the marriage is complete.
15. Buy Tail Insurance Coverage
No matter how great of a job you do drafting a premarital agreement, your client may sue you. Maintain malpractice coverage while you are a practicing lawyer, but also remember to buy tail coverage when you retire.