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SUMMARY KEYWORDS

premarital, parties, client, marital property, property, marriage, contract, cohabitation agreement, separate, married, marital, divorce, attorney, gifts, advise, court, slide, advance, handled, treated

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Hello, everybody, my

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name is Russell know and I'm an attorney in California, I practice primarily Family Law litigation in the greater Los Angeles area where I have handled court. Numerous court cases in various counties including Orange County, Ventura County, Riverside, San Bernardino, Alameda, San Francisco, all of our Bay Area counties. Today, we're going to go ahead and present a seminar to you on getting married 10 issues to consider before you get married. Now many of us this topic is going to be very applicable to potential clients and actual clients coming into our office seeking our advice. And as attorneys, we would hope whenever we divorce couples, and also talk to people about marriage, it's a great a really awesome adventure. But at the same time, we have to think about our clients assets, separate property assets, and also their family's assets in which your client is trying to protect or the clients family is trying to protect. When they do consider getting married to an individual or when they're actually in the process of arranging for that marriage. One would hope the diligence practitioner would hope that before the party started talking about divorce, that any items that have to deal with separate property would have been discussed well in advance of when the wedding date was but today for today's purposes, we're going to consider 10 major issues, which ranged from marital property to separate property, adult children, children from a prior marriage, also aging parents, and other topics which include premarital gifts, and potentially a premarital contract and whether that's appropriate in the particular client matter that is coming through your office. So let's go ahead and move to slide. One. That's actually excuse me, that would be slide two, we're going to talk about our first topic, which is pre marital gifts. And what are premarital gifts, just as it sounds, gifts that were given to the other person in a romantic relationship that were given before marriage. And they don't

necessarily have to be in contemplation of marriage, but it was definitely given before the date of marriage. And what type of gifts could these be, they could be pretty much anything. It could be they could range from for a woman article of jewelry. For both a woman or a man a very expensive piece of artwork. It could also be an automobile, it could be other items of property and value, which include perhaps a ship a yacht, an airplane, or something of substantial value, but that is a premarital gift. Now whether you want to consider that and label that in a later type of contractual agreement that we'll talk about whether it's a premarital contract post marital contract, it could also be in a cohabitation agreement, you can discuss the premarital gifts, and whether those are just going to be treated as separate property not mentioned at all, or whether they're just downright gifts in which nobody is really going to care about later on in the future. premarital gifts, the reason why we bring that up in this seminar in the sub CLE seminar is twofold because the premarital gift could also reference it can be, you know, something that has to do with a family heirloom in which perhaps it's a necklace or maybe it's a watch in which was passed down from generation to generation and your family have substantial personal value while not so much value in terms of finances in which that could also definitely be replaced. So you want to consider whether you and your potential spouse to be are going to treat these premarital gifts as something that is going to be returned or perhaps passed on to future children if they decide to have children

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in the marriage. So that's definitely one area that you want to bring up to your client when you do have a client consultation, which we have a lot of at our firm, which includes lots of premarital contract consultations or premarital contract review and what should we do talk to The other party or we talk to the party, about whether they want to include that type of provision in the premarital contract. Usually, my clients don't really care too much about it. But then of course, later on, when we are going through

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a client matter in which there is a divorce, unfortunately, then premarital gifts are actually brought up. And unfortunately, I mean, we can do the best that we can. But the law is what the law states and the family code and if you're married, and that gift was given prior to marriage, I mean, certainly you can request that item is returned. But whether the family court is going to have any authority is pretty much the answer is no. If it's before marriage, however, if it is mentioned in a valid agreement, such as a premarital contract, and of course, that's going to be enforceable, like let's say hypothetically, that there was a watch that was given in advance of marriage and in contemplation of marriage, and that was premarital gifts similar to a diamond engagement ring in the American culture, then, of course, the family court would be inclined to go ahead and over that as pursuant to whatever the premarital contract states that it's to go back

to the whites to to the wife separate property. Okay, so let's go ahead and move on to slide three. And we are still on premarital gifts. So let's take a look at the California Civil Code. Now the Civil Code is different than the California Code of civil procedure in which we're all familiar with who practiced Family Law litigation. And also for just those of us have prep practice, General civil litigation. This is the Civil Code. Okay, so Civil Code, section five, excuse me, 1590 Civil Code Section 1590. And let's go ahead and reference slide three in the PowerPoint presentation, which states were either party to a contemplated marriage in this state, which is the state of California makes a gift of money or property to the other on the basis of the assumption that the marriage will take place. In the event that the don't me refuses to enter into marriage as contemplated or that it is given up by mutual consent, the donor may recover such gift, or such part of its value, as May, under all circumstances of the case be found by a court or jury to be unjust. So we always think about the diamond engagement rings. So let's say hypothetically, the diamond engagement ring is $55,000. And I pick $55,000. because later on we're going to talk about whether this goes to general civil Unlimited, or general, excuse me, General limited. And, you know, General, General Limited is going to be any any case that's 50,000. And under, in the California State Superior Court, whether you're going to sue someone

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for

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that or whether you're going to go to civil Unlimited, over $50,000 in damages, and you're going to, of course request attorneys fees and costs, and any other expenses related to obtaining, let's say hypothetically, for a woman obtaining the let's say, hypothetically, the Rolex watch, which is $55,000, or for, for a man, the diamond engagement ring, that's $55,000. So okay, so let's take a look at the case law if one person calls off the wedding. So these the two parties, they were in contemplation of marry marriage, and this is an actual case, the ring must be returned to the person who proposed with the ring. And if both parties call off the wedding, if both parties so if both parties actually call off, we're not going to get married, the ring must, must also be returned to the person who purchased the ring. There is an exception, the legal authority exists, suggesting that when a person who propose what the ring calls off the wedding, then the Dhoni the person proposed to actually gets to keep the ring. So the case that you want to take a look at is simonian versus simonian. And that's a 1950 case. The case citation is listed in slide three of the PowerPoint presentation which we're currently on. And that's nine, six Cal app two D and the page numbers 259. So take a close look at that. If you happen to have a case Unfortunately, some people just can't let go. And that's okay because then for sure, you can go ahead and try that in civil court. If the engagement ring and or The article or jewelry or I mean, it could be a car, whatever it is that the premarital the gift was given in contemplation of marriage and that marriage doesn't occur,

then some party wants to go ahead and go into court and get that, then that's the case law, that's definitely going to probably provide for that exception to get your client what they indeed want the premarital gift back. So you definitely want to take a look at that case, because this is the particular case where man and woman were engaged and there was a diamond ring, the appellate court upheld the trial court decision, awarding both gifts. So there was a watch. And then I think there was like a bracelet, and those were given to wife, but the husband and the wife both decided that they weren't going to get married husband wanted it back. But it turns out that the wife wanted to still get married, with a wife to be wanting to get married. But in any event, the wife was allowed to keep that under the California law.

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Another case, we're moving on to slide number four in the PowerPoint presentation is Sha versus Sha. And that's the 1964 case, the case citation is two to seven Cal app 2d at 159. And a couple lived together for four years. So they were cohabitating, the man placed his girlfriend's name on real properties on an article of property, because he relied on her promise that she would marry him when her divorce was final, the couple separated, is actually quite common before marrying, and the woman eventually married another person, the court awarded all property back to the man because she failed to marry him. So that is another case of well, you promised me that we would get married. So I went ahead, and I put you on this property, but we decided not to so the court and and this is not Family Court. But this is actually a civil case, civil litigation matter, and the court held in in the man's favor. So you just definitely want to keep in mind premarital guests, because if you don't keep in mind what the premarital gifts are, then there could definitely be unfortunately, litigation later on in the future. And even if it's not civil litigation, a lawsuit going from the Superior Court in unlimited over cases over 50,000, you might have general limited cases at 50,000 or under. And unfortunately, sometimes we do get those clients as well that are calling in a potential or in a potential client consultation case in which the client I mean, the ring is valued at what 3500 and they're just very upset, and then they want to go to small claims court, irrespective of the matter, then, you know, if you have one of these clients, then you know the remedy is going to be in small claims court at that time, and the opposing party is going to be subjected to that. So it's important to get these details out of the way when our clients are actually considering marriage, because in the event that something does happen. Unfortunately, people have to have a tendency to feel wronged and want to be vindicated in some way. And sometimes that remedy that exists for them in which they feel that they would feel, you know, vindicated as a result of not being able to get married would be through the litigation system. So it's important to go ahead and discuss those premarital gifts and how those are going to be handled, and should they decide in a premarital contract. So let's go ahead and talk about our next subject, which is in slide five. And that is our second topic. Our second issue in which we should we should advise our clients to go ahead and consider and that's the premarital contract. And with the premarital contract, prenuptial agreement, as they're widely known in today's

society, because it's a contract that's contemplated in advance of marriage. And there are various requirements, boilerplate requirements that we're all familiar with in family law as a litigator, and you definitely want to tell your client that the other party should be represented and that should be independent legal counsel, and even if you do advise your client or your client is so adamant that his wife to be does not want an attorney and that the wife to be will sign off on a voluntary waiver that indicates that they don't want an attorney that is just going to be a big problem later on in the event that the parties decide to get divorced. Because that is Giving the party who is who doesn't have access to most of the

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assets to

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go ahead and engage in litigation to invalidate the premarital contract. And so in order to avoid the ness, the appearance of one party taking full advantage of the other party, you're taking partial advantage of the other party and in order to ensure that both parties are adequately represented and their interests are being upheld, after in the event that the parties decide to separate or divorce after years of marriage, it's important to advise the client to go ahead and pay for the other side's attorney, or have the other party agree to pay their own attorney independent of the attorney that you're representing, or that you've retained or that they have retained to go ahead and draft up this premarital contract and also to review the premarital contract, review the marriage the premarital contract for its validity, and to ensure that all of the guidelines have been met, and everybody is getting treated fairly and equally that way later on. If this does go to litigation, nobody is going to question the intent of the parties, the intent of the attorneys, the intent of whatever side deals may be alleged and it will be validated. So it's important to go ahead and number one to have that party both parties represented by independent competent legal counsel.

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Okay, and if we want to move on, let's actually let's go ahead and move on to slide six. And slide six is going to head is going to discuss more on the premarital contract. So premarital contracts typically, I've never actually seen one that's verbal, but typically, premarital contracts, premarital contract agreements, at least in the state of California are in writing, and they are signed by both parties. And no consideration is actually necessary. Take a look at the California family code. The California family code specific provision will indicate family code 1611 that no consideration is necessary. And that's actually in slide six of our PowerPoint presentation. Okay, and the other requirements are that both parties actually have the time to review the premarital contract in

advance of the actual wedding date. I mean, typically, the general role is at least a seven calendar days before it was actually signed, and also of the marriage at least seven calendar days. But if you really want to think about this, I mean, if you've got substantial assets involved have a longer period of time, the better the more drafts that you have gone through the better off that you are going to be. And as a practice point now, I didn't put this in the PowerPoint presentation because this was general advice that was given to me when I was a little bit younger in my family law litigation, and also premarital contract experience. My mentor told me you know what our firm does, we actually take two separate retainers when we take a premarital contract. And here's why. The first, the first retainer that you take is going to be for the drafting and then the negotiation with the other side with the opposing with the opposing client. And then also, the second retainer is also going to deal with some modifications, but it can also be for future litigation in the event that the marriage does fall apart. And the intent is question on specific items such as transmutations, changing the character of separate property to marital property. You know, now one party is saying that a house in which both parties lived in is not marital property, and that's separate property however, it was listed as being marital property in the premarital contract. So indeed, who is going to get this article of property after divorce? So we have to think about those types of situations. They're very hairy and complicated if the intent is not explicitly spelled out in a premarital contract. So keep in mind in the premarital contract that you do want to have as much advanced notice as possible to the other side. So that way, they there is no dispute with regard to the intent of any issues that the parties have in terms of property, or in terms of corporations or anything else that the parties could potentially argue about. Don't other requirements in the state of California for the premarital contract are that the parties have broad discretion to contract with related to the issues of property, life insurance, terms of wills, and trusts and other matters to take a look at this family Code Section 1612, and other things that are going to be unenforceable by a family cordon, which, of course clients love to ask all attorneys to do, and I doubt that this is just for the state of California. This is probably, you know, nationwide and actually worldwide for that matter. You know, sometimes clients asked ask us to if they can draft in policies that are

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that are void by public policy thinking that if we drafted in that, who knows it may actually go through? The answer is no. So take a look at that slide point, you cannot limit the amount of child support by agreement in a premarital contract family Code Section 1612, Subsection B, so we're not able to do that, we can certainly put that in for you. But we're going to put in a note that indicates that as pursuant to family code, section 1612, Subsection B, the parties understand that the court and also this Agreement shall not limit child support by agreement, however, you can put in the intent that we are awarding more of the marital property or the separate property to be converted to marital property as a family support type of payment for the purposes of child support. However, that's going to be an addition to their obligation as per guideline child support

as rendered by let's say, hypothetically, the county of orange in California. So um, you know, and then a real famous one is that we got for premarital contracts, can we go ahead and draft in the number of times that we have sex in, you know, the month? Actually, no, we're not going to bring that into court, I'm happy to draft it in if that's what the parties so desire, or whatever, there's nothing in the family code that's going to go ahead and enforce that. It's against public policy. So, you know, and I'm sure that you guys are laughing right now. But this is real, we don't make this stuff up. And, yes, we do have clients that do come in with these types of requests. And they certainly are requests and you're entitled to live your marriage the way you want to live it and hopefully the other parties are on the same page. And you won't need to have to reduce the sexual agreement or child support agreement in writing. But you know, where the parties can't come to an agreement, you know, they're gonna have to decide whether marriage is appropriate, or whether that'll be an issue to be litigated later on in the future. So agreements on spousal support, are are noted in premarital contracts. And they are not going to be enforceable if the other side was not represented by independent counsel at the time the agreement was signed, and if the spousal support provision was unconscionable, at the time of enforcement. So take a look at family Code Section 1612, subsection C. So when we talked about unconscionability, that's going to be you know, a defense to the validity of the premarital contract in the event that there's litigation, because in terms of spousal support, you know, I mean, we could have, let's say, hypothetically, the marriage is a 2530 year marriage and back in, let's say, 1986, you know, spouse, the spouse that doesn't earn money that gave up her career to go ahead and take care of the four minor children, while husband's career continued to advance as a, I don't know, a computer engineer, and the company stock took off and you know, now this company is worth millions, and it's going to continue to grow in today's economy, certainly a spousal support,

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certainly a spousal support, provision waiving spousal support when and there's no attorney, there would end up being invalid dated by the court, that would be legit, if there was no independent counsel there at the time. So we definitely want to be aware of that. So go ahead. Take a look at slide number six for those specific points. Now let's move on to slide number seven, we're still talking about the second major issue that you want to address with your client in the event that they're thinking about marriages. And we're still on premarital contracts. But let's talk about the defenses to the validity of a marital contract and premarital contract. So again, if one party chooses to get married, actually, both parties choose to get married, right? And we have a premarital contract. But then, you know, years later they decide the parties that they want to go ahead and get divorced, then one of the spouses wants to say, Why the heck did I sign this premarital contract? Well, the defense to the validity of the contract would be lack of capacity, involuntary execution, unconscionability lashes estoppel, undue influence, no exhibits no disclosures of accurate assets. So take a look at these defenses. On slide number seven are on right now I'm not going to go through each and every one of them though, this could actually be

quite interesting and interesting topic to get into meaty discussion about but, you know, you will never be surprised once a marriage falls apart how people do come and try to take it apart. And it's a you know, it's just, you know, like, kind of like in your ABC alphabet, kind of what what my first slide takes a look takes, you know, the the the artwork of the PowerPoint presentation, you know, the little ABC image, these are the basics that are going to provide a solid foundation to your marriage, but in the event that it falls apart, you need to be prepared for that. And that's why you should have both parties represented by independent counsel. But in addition to that, if you present this premarital contract to a party that, you know, doesn't have that much time, perhaps only a week or a week and a half to review before the wedding takes place. The wedding invitations have indeed already gone out and there's a big lavish wedding that set you know, beach side, then what a heartbreak that would be so you know, one party may feel unfairly taken advantage of. And then later on, you know, the marriage unfortunately falls apart. Well, here we are. And you're left with the facts. And the timeline of when the premarital contract was negotiated, one party felt pressured, and then the court may actually choose to set it aside. So you don't want that. So you want to go ahead and advise your clients to be as fair as possible. To be fair, this is your spouse, this is going to be your lifetime partner. And you want to treat each other with respect. And also fairness because even if you don't and there's no premarital contract, this may later on or there is a premarital contract, and you think it's valid. This is later on going to come back to bite both the firm and also the client and the you know what, so it's better to go ahead and make sure that everybody feels that they are treated fairly and we adhere to the guidelines of the family code. So let's go ahead and move on to slide number eight. And that will bring us to our third concern when you think about getting married or your client is thinking about getting married. Married. Let's talk about having a cohabitation agreement. Now, does that make sense to have a cohabitation agreement? Is it valid?

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Yes,

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the answer is yes to cohabitation is definitely valid. What was the infamous case was Marvin versus Marvin. And on slide number eight of the PowerPoint presentation. We have Marvin versus Marvin, the actual case citation there and it was decided by the California Supreme Court in 1976. Now it was also famously known as the palimony suit. And when I say palimony, this does not go in the family court, but it goes into the civil court. So the California State, Superior Court civil court, and that what a palimony suit is, is it is a suit, not for spousal support, but of something similar, and that's, you know, you promised to take care of me to financially support me as much as my client as the contract goes. So let's go ahead and talk about a cohabitation agreement and what it is and of course, if this case or this type of client matter comes to you, you go ahead

and you reference slide number eight, nine, and what goes into a cohabitation agreement and what is it a cohabitation agreement is a contract on go ahead and make sure that you're on slide number nine. In the PowerPoint presentation. It's a cohabitation agreement, and it's a contract governed by the California contract law outlining each partner's financial obligations. to the other, both during and after cohabitation. It also specifies what property belongs to each party in the event that the parties decide to end their relationship. A cohabitation agreement is a good idea if one or both parties substantially brings more money or property into the relationship into the relationship. In other words, if there's an imbalance, if one party makes more the other party doesn't, then perhaps it may make sense to advise your client to go ahead and have a cohabitation agreement. Or if one of the parties has plans to leave the workforce to be a full time or a part time homemaker to stay at home with you know, maybe the party's children, the dogs, I don't know whatever it is, or if one party has business or assets or debts that he or she wants to keep separate and not something that they share in common. And if one party is making payments, sole handedly, to the other property, other party's property, or if they want to specify some sort of financial promise, or, or other type of promise. So take a look at that slide. Number nine. Let's move on to slide number 10. Now, slide number 10 is just going to go ahead and specify the elements of the cohabitation agreement, which include the circumstances it's similar to a premarital contract when you have the recitals on page one to two, however long it is with marital statuses of both parties to the cohabitation agreement, the gross income all other types of income that each party is receiving the assets, the net worth, you must want to dis glows you choose to disclose who has what assets, and whether these parties want to modify the structure in the property status, each party's each party's property status. And then they also want to discuss

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separate and joint accounts and any acquisitions that each party has. And then also any debts whether they're unsecured or not, as well as do the party share a household account to pay for the household expenses, which include groceries, utilities, any sort of gardening work or any sort of upkeep to the place where they're living is the place where they're living the structure. Is it a single family residence? Do they have a mortgage? Is it just a rent, how is that going to be paid? And then they want to specify in the cohabitation agreement, whether that is how it's going to be terminated. And who's going to get what to avoid having to go to court and make sure that this is enforceable or unenforceable. Okay, so that's cohabitation agreements. Let's move on to both our fourth and also our fifth, I'm going to talk about the fourth and the fifth issue of concern to talk about with your potential client who has come to you in advance of marriage and has said, Hi

there practitioner, should I keep my property separate? Or should I keep it marital, when we decide that we're going to get married, they let you know where their anticipated date of marriage is, of course, the ideal client would come into you a year in advance of when they're deciding to get married, or when they're contemplating marriage. And then you could advise them what they think about with regard to premarital gifts. So in advance of when they decide to buy a gift or decide to give a gift from the family heirlooms, how they're going to treat that and whether there's going to be a premarital contract and some of the things that you are, you know, part of our job as an attorney is, you know, remember when we took our oath of office with the State Bar of California that we are attorneys and counselor of law, and we are a counselor of law. So you know, we have to counsel our clients, unfortunately, sometimes we feel like we're a therapist, or fortunately, I don't know, some of us like it. Sometimes I'm okay with it. But other times, I think, do you really want me to sit here and Bill my currently hourly, which is over $400 versus an hour, so that you can, you know, tell me about all of your woes in life. And it's definitely interesting getting to know some of our clients, you know, they are large, very colorful characters, just like we are as attorneys. However, you know, we are here to give you legal advice and also devise a legal strategy rather than, you know, try to understand why things happened in their life the way that it did. So, one of the major items that you definitely want to talk about with your client is number four separate property or number five marital property, and we're going to talk about that in at least the next three slides that we have, that we're going to come across. So let's go ahead and move on. On slide 11. And in slide 11, we are going to identify, you know, separate property, you know, you want to talk to your potential client or you want to talk to your client, about all the separate property, if they have how they obtained the property, get to know the client, understand the details, did this this piece of property come down the family line has this piece of property that they purchased with their current spouse to be and whether they want to maintain that as a separate property, or if that's a joint tenancy with right of survivorship, or just the joint tenancy, how we're going to go ahead and convert that perhaps marital property. And if that's the case, if they want to keep it separate, then we need to advise them that they need to keep adequate records that actually indicate that any improvements to let's say, hypothetically, it's real property that they need to be adequately taken care of, and listed in a record and an Excel chart, whether that's in a written ledger, then definitely for sure, they need to go ahead and do that. So our clients are going to have to actually be very diligent about this. However, in the initial consultation, they will need to be advised of that. So that way, they will go ahead and be aware of the legal issues that there are out there.

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So that that way they can stay protected. We also need to make sure that they have good record keeping and when I say good record keeping, it's okay to have you know what the date transaction was made to make improvements to the property, they can go ahead and take a look at receipts receipts are going to be a little more difficult. However, now we have sometimes

electronic receipts, but we want to go ahead and make sure that the parties if they decide to keep items separate that they don't commingle funds, meaning that they don't mix funds together. So what they will need to do is they need to actually take a look at it, and then have electronic receipts. And then what they can do is also keep a file and then keep things updated in that regard. So let's go ahead and move to slide number 12. We talk about separate property bank accounts. So before the parties get married, they should talk about how they're going to handle their separate property bank accounts. Are these going to continue to remain separate property, no marital funds are going to be used or deposited in these separate property accounts. Because once they do, then it's presumption that it's a marital property account. And then separate property to pay separate property life insurance but separate property, marital property, if you decide to have a marital property account, how that's all going to be handled, how is how are wages going to be handled that are earned during marriage? What about wages that were saved? outside of marriage? Is that going to be treated as marital or community property? The default in the community in the family code is if all income earned during the marriage is marital properties. So unless the parties decide to contract out of that in the premarital contract, or in a premarital contract, that is what the default is going to be. So it's important that you discuss that with your potential client. Take a look at slide number 12. slide number 12 is very important because these are the hard questions, the hard concerns, which is what gets folks in trouble when they don't talk about it when they're in that honeymoon period in the relationship. But later on down the line. These are frequent causes of divorce as a divorce attorney or as a family law attorney and we see a lot of these, you know, financial issues, especially in the times like right now when we're going through financial crisis with the COVID-19 Coronavirus that you know there are you know transmutations changes in property from separate property to marital property and in the transmutation type of an agreement. You want to advise your client to be careful that any any type of property that separate property that you want the marital community to have as well as be passed down to the biological children of the marriage. Definitely want to have that in a form of writing so that there are no disconnects, no arguments later on down the line. In the event that the parties decide that they do want to go ahead and get divorced, then it is what it is. But at least you have something that's actually documented in written record, that this is what the parties both wish. And then in the event that we have loans that are from separate property, financial accounts to marital separate property or marital property, bank accounts, how are these going to be handled? How are they going to be kept in record whether the parties are going to agree that they're alone from separate property to marital property? And when they're going to be paid back? And whether there's going to be interest or whether they're gifts from the elder parents or the grandparents giving to the children who are married, who are the subject? Where are your clients? How is that all going to be handled, whether that's going to be treated as separate property or whether that's marital property in in the run up divorce in both parties gets some sort of, you know, financial compensation for that. All of these we definitely want to keep in mind when advising our clients on how to what issues to talk about before they decide to get married. Otherwise, it could be a tremendous heartbreak

and tremendous drag, going to family court to sort this all out. So keep in mind, section 12 or I'm sorry, PowerPoint slide number 12, which are concerns of item number four and item number five in the premarital contract.

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Okay, and other items, which we did also discuss which are on PowerPoint, slide number 13 are assets purchased with commingled funds, keep in mind that assets purchased with commingled funds are presumptively going to be treated as marital property. So the parties are should ensure that if they do want it to be considered a piece of property as separate property that they need to absolutely make sure that the separate property is coming. separate property of financial monies are coming from a separate property account that is earmarked only for separate property, and that there are adequate records good record keeping that proves that effect. Otherwise, you know, one deposit of marital funds, essentially Garner's that entire account, pursuant to the family cases and family code, marital property, and have that good general ledger, line account number description, separate property to marital loan that actually describes each and every transaction. slide number 14. Now another issue that we see with some clients is, or potential clients are children from a prior marriage. So how are children from a prior marriage with your client coming into your office saying that they're going to get married? How that that's a major issue? How are these children going to be taken care of, let's say hypothetically, hypothetically, that these children are minor children under the age of 18, are they going to be treated as children of the marriage? Or are they going to be treated just as children of the obligation of one parent who's bringing them into the marriage. So they definitely want to talk about that what happens in the event that there is a divorce will one party of that particular marriage, not the biological parents be entitled to visitation, they could actually file a petition in family court for visitation, even though they're not the biological parent, as long as they have standing that, you know, such a, such a detriment to the child's best interest would occur. And we have actually had those types of cases. So you definitely want to talk about how children from prior marriage or a prior relationship are going to be treated in the marriage that they're currently both entering on, and whether they're going to provide for health and life, life insurance. And then you also want to include in the event that they are indeed going to be treated as the parity or as the party, the parent, the parents, child and all obligation of the parent who's bringing them who's going to pay for private school, college, professional school, or any other type of expenses that children may have at that young age. And then of course, you know, we're going to talk about a major issue with which is the estate plan, but you know, you also want to reference that in and they may want to reference you know, children from prior marriage or relationship in also their estate plan. So that is the sixth major topic is children from a prior relationship, prior marriage, and a lot of times clients just say, Oh, yeah, they have a son from a prior relationship, but he's too fully taken care of by their other parent or fully taken care of by father because they make substantial amount of money and then later on, it becomes

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a problem lo and behold, because they never discussed about the details. So if they have you advising them as the diligent practitioner, you know, these are hard subjects to talk about, but you go on and talk about them before you, you get married. That way, they're no disconnects, and they're no arguments. And no, no one is feeling blindsided or left out. So that is the sixth major area that you definitely want to advise your clients to talk about before they decide to get married, or if they're thinking about getting married. And then in today's economy, what we want to also discuss as well is adult children. Now whether that could be adult children of the actual marriage, or adult children from a prior relationship, which builds in from our last slide. So now we're on slide number 15. So you want to include if you decide to have a premarital contract, and indeed your client may come to you and have decided, you know what, Bill, I decided we didn't, we got married, and I didn't listen to you, even though you advise me to go ahead and get a premarital contract, no harm, no foul. But now I want to post marital contract. Well, we're not going to talk about post marital contracts here, because that's going to require two or three more hours of out of our time, which would be definitely interesting to provide some explanation there. But then we're going to go ahead and save that for another day. But with the post marital contract, you know, that is similar operates similar to a premarital contract wherever that happens after the parties decided to get married, but they are not getting divorced yet. But a post marital contract will address any issues about property, any issues about custody visitation of children or any other issue that you want to talk about in the event that both of you decide to get divorced, and also in contemplation of staying married, because let's say for instance, they're not ready to get divorced when they're thinking about it. And then they outline different issues and how they want things to be handled, such as adult children do, we want to continue to provide for our children, financial support after they've reached the age of 18 graduated from high school in excess of what the California family code provides. So they graduate, but they're still you know, under the age of 25. And they are still going to school. So yes, parties can agree to provide financial support, so long as they agree, and it's not unconscionable, the family court will go ahead and enforce that. So that is our seventh major topic. Because this is a bone of contention that we've seen with clients. thinking of getting legally separated or filing for divorce is one party wants to constantly care for the adult children of the marriage, whoever the other party doesn't, they want to go ahead and start preparing in advance more for their retirement. So you definitely want to think about incorporating a provision in for adult children in a premarital contract or a post marital contract or have a discussion altogether, in which the other parties or in which both parties talk about what we're going to do with our adult children or our children, once they reach 18, whether we're going to continue to provide for them, or whether we're going to tell them you have to move out of the house and you've got to figure it out.

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So these are major issues, which will later become a you know, a bone of contention if they don't

talk about it in advance of marriage. So have your client or your attorney, go ahead and have you as the attorney, bring that up to your client who is in their honeymoon period right now and say, Hey, we're real proud of you. But we also want to give you this list of topic, topics to discuss with your significant other to ensure that this is indeed, you know, a partnership for a lifetime. And let's make sure that we're on the same page with our hypothetical children to be or the children that they may have already together. And then that brings us to slide number 16 of our PowerPoint presentation. And that's elderly parents, how are their elderly parents? If they are still around? How are they going to treat them? Are the elderly parents Welcome to be living in the marital home? Or are they going to live in a separate property home of one of the spouses that they've obtained? well in advance of the marriage, or are they going to live in a marital home in a different state? And then are they going to charge their elderly parent or they're in law, money, which is going to go to the marital community? Or are have the parties decided to keep the in law or the or the all elderly parents in an assisted living facility, whatever the issue is, elderly parents, that's an important subject because again, that's going to deal with finances. And that's hard question. That is a concern in which parties frequently dispute argue about in marriages. And ultimately, it's a contributing factor to the demise of a relationship in which that will bring up party or parties to come and get divorced in California. So in advance of planning for divorce, it's important that we have these important discussions with our clients so that the clients can talk with their significant other spouse to be and discuss very significant issues such as elderly parents, how are we going to handle the elderly parents? How are we going to provide For them, when they're where they're not living in our house, or are they welcome to stay in our house and for how long? Or are they going to be able to stay in a separate property residence in which the marital community will go ahead and pay the upkeep or for a caretaker? Or will they have a separate property or a marital property residents in which they will each have alternating obligations to go ahead and pay for that, as well as maintain communication with their elderly in law was so you know, plant planning for the future is also definitely very important that slide number 16. Now, let's move on to slide number 17, which sort of naturally flows on and that's temporary incapacity or incapacity of either husband or wife to be, and they get married. So who do we want to be labeled as the power of attorney now we're not going to talk about drafting up a power of attorney, we're just going to talk about Okay, are we going to designate our spouse to be the person who's going to have the authority to make decisions for that spouse financial decisions on the power of attorney, or we're going to have a friend, a parent, you know, a longtime, you know, godfather or some other third party label, as the person of having the authority and capacity to make make decisions of for the other in the event that they're incapacitated. So, um, for sure, it's definitely it is definitely an issue, which nobody really likes to talk about, we plan on it not happening. But at the same time, it's important to talk about these types of decisions, or these types of instances, these types of events, because in the event that that does happen, then what ends up happening is one party gets their feathers ruffled, and then who knows, they may want to get divorced over, you know, not knowing that somebody else was named as the person the executor. In the event that one person becomes temporarily incapacitated, or the business

partner of another becomes the person who's going to take care of the financial obligations of one person. So it's important to discuss that particular topic with your significant other to be, and in advance of marriage. So that way, there definitely are no surprises to this effect. So let's go ahead and talk about our last topic of discussion. And before your client gets married, go ahead and advise them to start planning and thinking about an estate plan. How is an estate plan going to be handled at this point? And we're not going to talk about the specifics or the substance of the estate plan, but what we are going to talk about is perhaps you have a diligent client

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in which they actually have their own separate property estate plan. Now, is that still going to be valid once they get married? Or are they going to have a joint will a joint a state and then also have a power of attorney? Are they going to revise those plans? Are they going to go ahead and revoke them entirely? And then incorporate? Or or are they going to go ahead and have a whole new estate plan drafted up in which they are going to mention their spouse to be after the marriage occurs? And will the advanced Health Care Directive need to be re written? These are all good questions, good concerns to talk about with our clients to raise with our clients so that our client is prepared in advance again, of the different things that they should definitely consider in the event that there is, you know, I mean, nobody wants to consider divorce. But at the same time, when we it doesn't have to be divorce, it could be death, and in the event that somebody does die, when they are going to be getting married, it's important or the die after they get married. You know, it's important that they do plan in advance of what happens in the event that you know that one person becomes incapacitated and then dies on unexpectedly, it's going to be a tremendous heartbreak. And at the same time having to deal with Who am I going to choose to administer my estate, or it having to go through probate is just going to be a nightmare. So have your client think about the different issues as to whether how and where they're going to handle this pool they're going to leave in charge, ensure that the client does talk about this with their significant other an estate plan for their joint assets, as well as if they had prior assets before how each of them are going to go ahead and handle that. Okay, so this will conclude our presentation on the 10 things major concerns that your client do should consider that you should advise your client to consider prior to getting married in the state of California. And a lot of these topics are going to be relevant nationwide and really worldwide. But you go ahead and you check in if you're watching this in a different state with your actual jurisdiction to make sure clarify what the timelines are, you know, hypothetically, for premarital and cohabitation agreement, but uniformly and all across in the States, you definitely want to advise your clients to ensure that they have a comprehensive plan in advance before they get married. Now, we're not a proponent at our firm of having a you know, a premarital contract at all times, but it's not. I mean, it could be appropriate, it can be inappropriate, and you ultimately have to decide for your client, whether you're going to advise that and quite frankly, you know, it is an emotional decision for your client. And that's why you as an attorney, are going to be advising them as to the most practical

approach and the most protective approach for your client. But it's important to actually bring in the actual different topics that they need to discuss with their spouse to be and to ensure that they're both on the same page, and well in advance of that actual date of marriage. And also ensure that in advance of that date of marriage, that they do talk and that they agree on the major issues that we discussed, you know, in this mc CLE seminar seminar, and that includes, you know, premarital contract your premarital gifts, you want to talk about children of the marriage, you want to talk about children from a prior marriage, how adult children are going to be handled, how separate property is going to be handled, how we're going to carry out marital property, and whether marital property is composed of joint earnings during the marriage earnings coming from

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marital corporations, and also how how is monies received from separate property corporations going to be treated is that going to be treated as marital property because the hard earned labor of wife is being used taken away from the marital community to advance the corporation and reputation and worth of separate property. These are definitely big, big, major discussions to have with the other side to make sure that everybody is going to be fairly treated and adequately compensated in the event that there is a premarital contract that does materialize prior to marriage. And we would advise that definitely as much time in advance of the marriage, that there should be a premarital contract in advance. And what our firm always

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advise advisors is

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unless there's a medical condition, and there really is no dire need to get married, ASAP, right now. Because you have your whole life ultimately to get married. And, you know, unfortunately, if you get your if your clients gets themselves in a bad position, then it's our law firms that will be handling the litigation and trying to get through with the court

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to

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go ahead and validate or invalidate the premarital contract if there was one. And unfortunately, a

lot of clients do not have a premarital contract. And in that situation, we have only the facts that we have to work as well as the witnesses, and the documents and records that our clients have kept and brought to us in order to go ahead and litigate their concerns in court to get them the justice that they need. So ensure that you talk to your client to who is awesomely going to get married here in the future, about the different the 10 different major subjects to consider when they are thinking or contemplating divorce. I mean, excuse me contemplating marriage, and have and be on the same page with those 10 different topics, major topics with their spouse to be because we ultimately don't want to see these folks in our office or in family court because marriage is a happy thing, although it requires heavy work and heavy lifting. You know, the fruits of it are definitely, you know, very beneficial to both parties. And we want to make sure that that lasts forever. And in order for that to have a solid foundation and to talk about these hard questions first among each other. And whether that's reduced in a writing with a premarital contract and through the use of an attorney or attorneys, then that's great. We will help in that regard. So should you folks in the MC CLE seminar have any questions go Feel free to reach out. My contact information is on slide 19 our last slide and that brings me to the conclusion. Thank you so much for listening