

## Altshuler and Spiro

EST. 1959

9301 WILSHIRE BOULEVARD, SUITE 504  
BEVERLY HILLS, CALIFORNIA 90210-5412  
(310) 275-4475 – (323) 272-5339  
FAX (310) 858-6763

Bruce J. Altshuler\*  
Randy M. Spiro

\* a professional corporation

Leo Altshuler  
(1919-1999)  
James J. Brown  
(1918- 1987)

### **DOES A REVOCABLE TRUST TAKE THE PLACE OF A PREMARITAL AGREEMENT? By Randy Spiro**

John Smith is engaged to Sally Jones. John does not want to enter into a Premarital Agreement because he has been told that setting up and transferring his premarital assets to a revocable trust will give him the same protection as a premarital agreement.

One benefit of a revocable trust is to give John the ability to avoid commingling his premarital assets with his postmarital assets. John might choose to transfer his premarital assets to his revocable trust and keep the earnings of John & Sally during marriage in joint tenancy.

Joint tenancy means right of survivorship, so if John or Sally dies, the other one would automatically inherit these accounts. If John and Sally divorce, John will show that the revocable trust only contains his premarital assets and argue that those assets should only be awarded to him.

But a premarital agreement does many things that a revocable trust does not. In a premarital agreement, each party can acknowledge that assets listed in attached schedules are the separate property of each party. Each party can further waive any claims against the other party's pre-marriage property.

Some states allow parties in divorce to make claims against each other based on oral agreements. In a premarital agreement, the parties can agree that they have made no oral agreements in the past and that they will make no oral agreements in the future.

In some states, parties to a premarital agreement can waive or modify their rights to spousal support which would otherwise be awarded in a divorce. In some community property states, parties can agree in a premarital agreement that earnings during marriage which would otherwise be community property will instead be the separate property of the earner.

A person may have a premarital business which he owns, works in and draws a salary from. In a community property state, if the salary is inadequate, it can be contended that a portion of the business will become community property. In a premarital agreement, the parties may agree that although the salary from the business received during marriage is community property, the other party waives the right to claim a community property interest in the business based on the inadequate salary theory.

John should seriously consider getting both the revocable trust and the premarital agreement. Although the results on this issue vary state to state, it is generally preferable for both parties to be represented by separate attorneys so that the poorer party cannot claim that she never understood the premarital agreement or that she never would have signed it if she had understood it.