

# PRENUPTIAL AGREEMENT WAIVERS

By K. Dean Kantaras and Jennifer H. Cavill

Until 2015, jurisdictions were divided about whether broad or specific language was required to waive rights in a prenuptial agreement. For example, funds earned during the marriage are considered marital funds, regardless of who earned the funds. Likewise, any asset purchased or enhanced with those marital funds, regardless of whether the asset was acquired prior to the marriage, becomes a marital asset, or at least has a marital component to which the other spouse is entitled. If it is a party's intention to keep his or her funds earned during the marriage as his or her separate, non-marital property, then, prior to 2015, a prenuptial agreement must expressly state that the other spouse is waiving his or her right to funds earned by the other spouse during the marriage. If an agreement did not include such a specific waiver, then the funds were marital, and assets acquired or enhanced by those funds have a marital component. See the 2<sup>nd</sup> DCA case of *Irwin v. Irwin*, 857 So.2d 247 (Fla. 2<sup>nd</sup> DCA 2003).

Similarly, an asset's enhanced value due to a party's marital labor or marital effort results in that enhanced value having a marital component to which both parties are entitled. Much like with funds earned during the marriage, prior to 2015, if it is a party's intention to keep an asset's enhanced value, due to marital effort or marital labor, as a party's separate, non-marital asset, then a prenuptial agreement must specifically state so. See *Valdes v. Valdes*, 894 So.2d 264 (Fla. 3<sup>rd</sup> DCA 2003).

In 2014, the 4<sup>th</sup> DCA decided the case of *Hahamovitch v. Hahamovitch*, 133 So.3d 1008 (Fla. 4<sup>th</sup> DCA 2014) where the parties' prenuptial agreement included a general release where the Wife waived any right to any of the Husband's property, including her right to any kind of alimony, support and maintenance, equitable distribution, division of



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property, special equities, attorney's fees, or any other rights regarding financial issues. The agreement also provided that each party would solely own his or her property acquired prior to or during the marriage, that neither party will make a claim against the other party's property owned as of the date of marriage, and that if property is acquired during the marriage by one party and titled in that party's individual name, then the property is solely owned by that party. However, there were no specific waivers of rights to funds acquired during the marriage due to marital effort or marital labor or specific waivers of rights to enhancement in value.

Despite this, the 4<sup>th</sup> DCA found that "under the plain language of the prenuptial agreement, the wife waived and released claims to property or assets owned by the husband at the time of the agreement, or acquired in his own name thereafter, including any enhancement

in the value of such property. The language of the agreement was broad enough to waive the wife's right to any asset titled in the husband's name that was acquired during the marriage or that appreciated in value due to marital income or efforts during the marriage." Furthermore, the Court held that when reading the provisions of the agreement together, it is sufficient to waive future enhancement of non-marital property, even if it is due to marital earnings or labor. This case was then affirmed by the Florida Supreme Court in *Hahamovitch v. Hahamovitch*, 174 So. 3d 983, 984 (Fla. 2015). Accordingly, broad general waivers may be sufficient where specific waivers were once required. For more information on prenuptial agreements, contact K. Dean Kantaras, P.A. 727-781-0000. ■■■

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