

State of South Dakota

# SOUTH DAKOTA PRENUPTIAL AGREEMENT

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This Prenuptial Agreement (this "Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between:

**First Party:** \_\_\_\_\_ residing at \_\_\_\_\_  
(the "First Party") and

**Second Party:** \_\_\_\_\_ residing at \_\_\_\_\_  
(the "Second Party"), each of whom may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Parties intend to marry each other; and

WHEREAS, (Check one)  the First Party has been previously married  the Second Party has been previously married  both Parties have been previously married  both Parties have NOT been previously married; and

WHEREAS, the First Party has \_\_\_\_\_ child(ren) from a previous relationship; and

WHEREAS, the Second Party has \_\_\_\_\_ child(ren) from a previous relationship; and

WHEREAS, the Parties currently have \_\_\_\_\_ child(ren) together; and

WHEREAS, the Parties wish to provide for their respective rights and obligations with respect to their own and each other's assets and property, including the property each of the Parties separately owned before the marriage and the property the Parties may acquire separately during the marriage, in the event the marriage is terminated for any reason; and

WHEREAS, each Party has made full, fair and reasonable disclosure to the other Party of his or her financial information regarding net worth, assets, income, holdings, liabilities and debts as set forth in Exhibits A and B to this Agreement. The First Party's financial information is set forth in Exhibit A to this Agreement. The Second Party's financial information is set forth in Exhibit B to this Agreement; and

WHEREAS, each Party acknowledges receipt, review and understanding of the other Party's financial information prior to signing this Agreement; and

WHEREAS, the Parties represent that they have had the opportunity to separately consult with legal counsel, however chose not to engage legal counsel in the drafting and negotiation of this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the Parties do hereby mutually agree to the following:

**1. Effective Date.** This Agreement will be effective on the date of the marriage between the Parties. In the event the Parties do not marry each other, this Agreement will be null and void and its provisions will be unenforceable.

**2. Premarital Property.** (Check one)



**Joint property.** Each Party's property listed in Exhibit A and Exhibit B that is separately owned prior to the marriage will be considered the marital property of both Parties.

**Separate property.** With respect to property acquired prior to the marriage, each Party's property listed in Exhibit A and Exhibit B will remain as the respective Party's non-marital, separate and individual property during and after the marriage, including any increase in the value relating to the property. Each Party will have the full right and authority to manage, sell, gift, transfer or otherwise dispose of his or her separate property. However, the following property will be considered the marital property of both Parties: \_\_\_\_\_ (Optional)

**3. Property Acquired During Marriage.** (Check one)

**Joint property.** All assets, real property, and personal property earned, acquired and given to either Party individually during marriage and earned and acquired by both Parties through their joint efforts or given to both Parties will be treated as marital property and owned by both Parties equally or as otherwise designated in a writing signed by both Parties.

**Separate property.** With respect to property acquired during marriage, any property earned, acquired and given to either Party individually during marriage will be treated as such Party's non-marital, separate and individual property, including any increase in the value relating to the property. Each Party will have the full right and authority to manage, sell, gift, transfer or otherwise dispose of his or her separate property. All assets and property that are earned and acquired by both Parties through their joint efforts or given to both Parties will be treated as marital property and owned equally by the Parties or as otherwise designated in a writing signed by both Parties.

**Separate property, with exceptions.** With respect to property acquired during marriage, any property earned, acquired and given to either Party individually during marriage will be treated as such Party's non-marital, separate and individual property, including any increase in the value relating to the property. Each Party will have the full right and authority to manage, sell, gift, transfer or otherwise dispose of his or her separate property. However, the following individual property will be considered the marital property of both Parties:

\_\_\_\_\_ (Optional)

All assets and property that are earned and acquired by both Parties through their joint efforts or given to both Parties will be treated as marital property and owned equally by the Parties or as otherwise designated in a writing signed by both Parties.

**4. Division of Marital Property.** In the event the marriage is terminated, all marital property: (Check one)

Shall be divided between the Parties with the First Party receiving \_\_\_\_\_% of the marital property and the Second Party receiving \_\_\_\_\_% of the marital property.

Is subject to division as determined by the jurisdiction whose law governs the construction of this Agreement.

**5. Ownership of Business.** With respect to the ownership of business:

a. Any business that is separately owned by either Party prior to the marriage will remain as that Party's non-marital, separate and individual property and will not be subject to division in the event the marriage is terminated. Any appreciation in the value of the business during the course of the marriage will be: (Check one)

Granted to the Party that currently owns the business



- Shared equally by the Parties
- Divided between the Parties as follows: \_\_\_\_\_% to the First Party and \_\_\_\_\_% to the Second Party or as otherwise designated in a writing signed by both Parties
- Do not specify

b. Any business acquired by either Party or given to either Party during the marriage will be treated as marital property and jointly owned by both Parties. In the event the marriage is terminated, ownership of the business and any appreciation in the value of the jointly owned business during the course of the marriage will be: (Check one)

- Granted to the First Party
- Granted to the Second Party
- Shared equally by the Parties
- Divided between the Parties as follows: \_\_\_\_\_% to the First Party and \_\_\_\_\_% to the Second Party or as otherwise designated in a writing signed by both Parties
- Do not specify

**6. Waiver of Rights.** Except as otherwise stated herein, each Party waives and releases any claims that he or she may otherwise acquire in the assets and property of the other Party as a result of the marriage, regardless of whether the assets and property were owned prior to the marriage or acquired thereafter. This waiver applies regardless of whether the property is considered marital or community property by the jurisdiction whose law governs the construction of this Agreement.

**7. Premarital Debts.** (Check one)

**Joint debt.** Each Party's existing debts or obligations listed in Exhibit A and Exhibit B that is the sole responsibility of either Party prior to the marriage will be considered the marital debt of both Parties.

**Separate debt.** With respect to debts incurred prior to the marriage, each Party's pre-existing debts or obligations listed in Exhibit A and Exhibit B will remain as the respective Party's sole responsibility during and after the marriage. Any increase in the value of the pre-existing debts or obligations will also remain the sole responsibility of the respective Party. However, the following debts or obligations will be considered the marital debt of both Parties: \_\_\_\_\_

(Optional)

**8. Debts Acquired During Marriage.** (Check one)

**Joint debt.** All debts or obligations incurred by either Party, individually or jointly, will be treated as marital debt and will be the responsibility of both Parties equally or as otherwise designated in writing signed by both parties.

**Separate debt.** With respect to any debts or obligations incurred during marriage, any debts or obligations incurred by either Party during the marriage will be such Party's sole responsibility, and the other Party will not assume or become responsible for such debts or obligations without his or her written consent. Each Party will indemnify the other Party and be responsible for all related expenses including attorney's fees if a debt or obligation is asserted as a claim or demand against the other Party's property. However, the following debts or obligations will be considered the marital debt of both Parties:

\_\_\_\_\_  
(Optional)

All debts and obligations that are incurred by both Parties jointly will be treated as marital debt and will be the obligation of both Parties equally or as otherwise designated in a writing signed by both Parties.



**9. Division of Marital Debt.** In the event the marriage is terminated, the marital debt: (Check one)

- Shall be divided between the Parties with the First Party responsible for \_\_\_\_\_% of the marital debt and the Second Party responsible for \_\_\_\_\_% of the marital debt.
- Is subject to division as determined by the jurisdiction whose law governs the construction of this Agreement.

**10. Taxes.** During their marriage, the Parties agree to file: (Check one)

- Joint** federal and state income tax returns, or as otherwise designated in writing. The Parties election to jointly file federal and state income tax returns shall not create any community property or any other rights or interests unless otherwise intended by the provisions of this Agreement, and each Party will continue to be liable for any and all taxes associated with his or her separate property. Federal gift tax laws and federal estate tax laws impacting the rights of spouses shall continue to apply independent of this Agreement.
- Separate** federal and state income tax returns, or as otherwise designated in writing. This Agreement does not waive the Parties' right to report their income for federal or state income tax purposes jointly. The Parties may elect to jointly file federal and state income tax returns, but this election shall not create any community property or any other rights or interests unless otherwise intended by the provisions of this Agreement, and each Party will continue to be liable for any and all taxes associated with his or her separate property. Federal gift tax laws and federal estate tax laws impacting the rights of spouses shall continue to apply independent of this Agreement.

- Do not specify.**

**11. Marital Residence.** (Check one)

- Separate ownership.** The Parties' marital residence will remain as the non-marital, separate and individual property of the (Check one)  First Party  Second Party during and after the marriage.
- Joint ownership.** The Parties' marital residence will be treated as marital property and owned equally by both Parties.

Party to remain in the marital home (Check one)

- In the event the marriage is terminated, the (Check one)  First Party  Second Party shall have the right to continue living in the Parties' marital residence for \_\_\_\_\_ years after the termination of the marriage.
- Do not specify.

**12. Household Expenses.** The First Party will be responsible for payment of the following household expenses from the First Party's separate account: \_\_\_\_\_

The Second Party will be responsible for payment of the following household expenses from the Second Party's separate account: \_\_\_\_\_

Both Parties will be responsible for payment of the following household expenses equally out the Parties' joint account. Household expenses will include the following: \_\_\_\_\_

**13. Disability.** (Check one)



If either Party becomes partially or totally disabled, the other Party shall be completely responsible for providing the necessary care to the disabled Party to the full extent of that Party's capacity and ability.

If either Party becomes partially or totally disabled, the other Party shall NOT be responsible for providing the necessary care to the disabled Party.

**14. Rights upon Death of One Party.** If one Party survives the death of the other, the surviving Party (Check one)  shall not  shall have the right to continue living in the Parties' marital residence for the remainder of the surviving Party's lifetime or as otherwise specified in the respective property deed or in the Living Will and Testament of the decedent Party.

Inheriting the marital home (Check one)

The surviving Party shall receive the personal property of the decedent Party. The surviving Party understands and agrees that any right to the marital home and personal property will be governed by the respective property deed unless otherwise stipulated in writing or the Last Will and Testament of the decedent Party.

The surviving Party shall NOT receive the personal property of the decedent Party. The surviving Party knowingly and voluntarily waives any right to a share in the distribution of the estate of the decedent Party, unless otherwise stipulated in the provisions of this Agreement.

The Last Will and Testament of the decedent Party or applicable state laws shall control. Both Parties, however, understand and agree that they may name the other Party as a beneficiary in their Last Will and Testament, life insurance policy or retirement plan. Such a transfer, bequest, or designation takes precedence over any provisions of this Agreement.

**15. Spousal Support.** In the event the marriage is terminated, the Parties have agreed to the following terms regarding spousal support or alimony: (Check one)

No Spousal Support will be provided. Each Party waives and releases any claims that he or she may have against the other Party for spousal support.

Spousal Support will be provided. Spousal Support will commence after either Party files for termination of the marriage in the state of the governing law. The  First Party  Second Party will make payments to the  First Party  Second Party as follows: (Check one)

Indefinitely. A payment of \$ \_\_\_\_\_ will be made on the \_\_\_\_\_ of each  week  month  year until the death of either spouse, the remarriage of the  First Party  Second Party, or until a court order modifies or terminates the agreement, whichever comes first.

For a Specified Term. A payment of \$ \_\_\_\_\_ will be made on the \_\_\_\_\_ of each  week  month  year for a duration of: (Check one)

- \_\_\_\_  months  years after either Party files for terminate the marriage.

- Until \_\_\_\_\_, 20.

Other arrangements: \_\_\_\_\_.

**16. Additional Provisions.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**17. Children from Marriage.** If there are any children of the marriage between the Parties, this Agreement will not affect the rights of such child or children to receive support from either or both Parties.



**18. Binding.** This Agreement will inure to the benefit of and be binding upon the Parties and their successors, heirs, executors, administrators, assigns and representatives.

**19. Severability.** In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the validity, legality and enforceability of the remaining provisions shall not be affected and the remaining provisions shall be construed, to the extent possible, to give effect to this Agreement without the inclusion of such invalid, illegal or unenforceable provision.

**20. Governing Law.** The terms of this Agreement shall be governed and construed in accordance with the laws of State of \_\_\_\_\_, not including its conflicts of law provisions.

**21. Disputes.** Any disputes arising from this Agreement shall be resolved through: (Check one)

Court litigation. Disputes shall be resolved in the courts of the State of \_\_\_\_\_.

(Check if applicable)

If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees) incurred in connection with the action and any appeal.

Binding arbitration. Binding arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

Mediation.

Mediation, then binding arbitration. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association

**22. Headings.** The section headings herein are for references purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision in this Agreement.

**23. Entire Agreement.** This Agreement, including all Exhibits attached hereto, contains the entire understanding between the Parties and supersedes and cancels all prior agreements of the Parties, whether oral or written, with respect to such subject matter.

**24. Amendment or Revocation.** This Agreement may be amended or modified only by a written agreement signed by both of the Parties. This Agreement may be revoked if both Parties sign a written agreement before the presence of a notary public or other authorized official. Revocation shall become effective when properly recorded as required by state and local laws.

**25. Acknowledgment.** The Parties acknowledge that they have been informed of their legal rights, have been given an adequate amount of time to consider entering into this Agreement, have read and understand this Agreement, agree with the contents of this Agreement and believe it to be fair, have not been pressured or coerced into signing this Agreement and have chosen to freely and voluntarily enter into this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.



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**First Party's** Signature

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**First Party's** Full Name

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**Second Party's** Signature

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**Second Party's** Full Name



**NOTARY ACKNOWLEDGMENT**

State of \_\_\_\_\_ )  
  )     **(Seal)**  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, by the undersigned, \_\_\_\_\_, who is personally known to me or  
satisfactorily proven to me to be the person whose name is subscribed to the within instrument.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

State of \_\_\_\_\_ )  
  )     **(Seal)**  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, by the undersigned, \_\_\_\_\_, who is personally known to me or  
satisfactorily proven to me to be the person whose name is subscribed to the within instrument.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_





## Exhibit A

**First Party's Financial Disclosures:**



## Exhibit B

Second Party's Financial Disclosure:

