

Sample Prenuptial Agreement

(NOT RECOMMENDED FOR USE IN ALASKA, CALIFORNIA, SOUTH CAROLINA, VERMONT OR WYOMING)

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PRENUPTIAL AGREEMENT BETWEEN

**LISA RENEE SMITH
and
RICARDO MONTOBAN, JR.**

THIS AGREEMENT is made and entered into this ____ day of _____, 2004, by and between Lisa Renee Smith, a resident of Chicago, Illinois, and Ricardo Montoban, Jr. a resident of Madrid, Spain, who shall be collectively known herein as "the parties". The agreement is also known as a "premarital agreement".

WITNESSETH:

WHEREAS, the parties are presently unmarried and intend to be married to each other within the next year and, in anticipation of such marriage, the parties desire to fix and determine various financial relationships that will apply during their marriage and upon the termination of their marriage whether by death, divorce or otherwise;

WHEREAS, information about each of the parties' assets, liabilities and approximate current income has been exchanged prior to entering into this agreement and summations of said information for each party is contained herein as Schedule A;

WHEREAS, each party has had the opportunity to fully examine the financial disclosures of the other party as summarized in Schedule A;

WHEREAS, neither party has consulted with an attorney concerning this agreement prior to entering into it;

WHEREAS, each party enters into this agreement freely and under no duress or undue influence upon his or her decision to sign.

The premises being considered, upon consideration of the mutual promises hereinafter set forth and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. Effective Date of Agreement. This Agreement shall take effect only upon the lawful solemnization of the marriage between the parties.

II. Rights to Separate Property. Each of the parties shall separately retain all rights and interests (including against claims that a property interest constitutes community property or quasi-community property under the laws of any state) in all property of any kind which he or she now owns, **including future appreciation thereof**, and said property shall be known herein as "Separate Property".

1. Each of the parties shall have the unrestricted right to dispose of such Separate Property, free and clear of any claim that may be made by the other by reason of their marriage and with the same effect as if no marriage had been consummated between them. The parties hereby agree and elect that all property designated as "Separate Property" in this agreement shall be exempt from claims, and is not to be classified, as "community property", "quasi-community property", or "marital property" under state law.
2. Separate Property shall include substitutions and exchanges for such property now in existence, and any proceeds therefrom, and from any income derived from such Separate Property, and any property purchased from the proceeds or income from such property. Separate property shall also include gifts or inheritances one party receives from a third party.
3. In the event either party should desire to sell, encumber, convey or otherwise dispose of or realize upon his or her Separate Property or any part or parts thereof, the other party will, upon request of a request, join in such deeds, bills of sale, mortgages, renunciations of survivorship or other rights created by law or otherwise, or other instruments, as the party desiring to sell, encumber, convey or otherwise dispose or realize upon may request and as may be necessary and appropriate to consummate the sale, encumbrance, or conveyance provided, however, that the other party shall not be obligated under this agreement to sign any agreement making his or her Separate Property subject to any debt, mortgage or encumbrance.
4. Earnings during marriage. All earnings of each party during the marriage shall be considered Separate Property of that individual **except** that each shall pay 50% of the common or family expenses. Nothing in this agreement shall be construed as relieving either party of an obligation to support their minor children.
5. Contributions and accumulations in retirement plans and accounts: In regard to retirement plans and accounts, the parties covenant and agree that all accumulations in, and contributions to, retirement plans and accounts whether **before or during** the marriage shall be the Separate Property of the party who owns the account or is the plan beneficiary.

III. Waiver of Right to Independent Legal Counsel. Both parties affirm that they have had an adequate opportunity to consult with an independent legal counsel regarding this agreement prior to its execution. To the extent either party has not consulted with independent legal counsel, the parties hereby expressly and voluntarily waive the opportunity to consult with independent legal counsel before entering into this agreement.

IV. Waiver of Other Rights. Except as otherwise provided in this Agreement, each party hereby waives, releases and relinquishes any and all right, title or interest whatsoever, whether arising by common law or present or future statutes of any jurisdiction or otherwise, in the Separate Property and probate estate of the other, including but not limited to distribution in intestacy, the right of election to take against the will of the other, any rights accruing by reason of events occurring prior to their marriage, and any right to dower, curtesy, and statutory allowances, and alimony (also known as "spousal support" or "spousal maintenance"). Such waiver, release and relinquishment shall not apply and is not effective with respect to any rights or entitlements a party may have as a surviving spouse under the Social Security laws or with respect to any other governmental benefit or governmental program of assistance. This Agreement shall not limit the right of either party to make such transfers of property to the other as he or she may wish during their respective lifetimes, or by will, or to acquire property jointly or in any other form of ownership. This waiver is further elaborated as follows:

1. Waiver of Rights Upon Legal Separation or Divorce. If there shall be a legal separation of the parties or if the marriage between the parties shall be dissolved by a decree of divorce or dissolution of marriage, and regardless of whether either party shall be at fault, the parties hereby covenant and agree that:
 - a. All property designated as Lisa Renee Smith's "separate property" under this agreement shall belong solely to Lisa Renee Smith and be his/her absolute property and, furthermore, free

- from any claims of Ricardo Montoban, Jr. that said separate property constitutes marital property, community property, or quasi-community property of the parties' marriage.
- b. All property designated as Ricardo Montoban, Jr.'s "separate property" under this agreement shall belong solely to Ricardo Montoban, Jr. and be his/her absolute property and, furthermore, free from any claims of Lisa Renee Smith that said separate property constitutes marital property, community property, or quasi-community property of the parties' marriage.
 - c. **Alimony:** Each party specifically agrees that neither shall make any claim for or be entitled to receive any money or property from the other as alimony, spousal support, or maintenance in the event of separation, annulment, divorce or any other domestic relations proceeding of any kind or nature. Furthermore, nothing in this agreement shall be construed as limited the right of either party to make claims for child support.
2. **Waiver of Rights Upon Death.** Upon the death of either or both of the parties, it is agreed that the other party (including heirs and assigns) shall make no claim against or assert any right to share in the estate of such deceased party **to extent of estate assets which were "separate property" in the hands of the deceased** as defined by this agreement. The types of rights and claims given up by the other spouse against the "separate property" of the deceased spouse include, but are not limited to, the following:
- a. The right to share in the estate or set aside a Last Will or Trust of the deceased party in the other spouse's capacity as a "surviving spouse" under state law; this right is sometimes referred to as the forced share of the estate of the deceased spouse or as the "omitted spouse" laws;
 - b. Other rights in the estate or other assets of a deceased spouse arising under state statutory or common probate law accruing to the benefit of a surviving spouse such as dower, curtesy, homestead allowance, and exempt property;
 - c. The right to act as executor or personal administrator of the deceased spouse's estate unless the deceased spouse's Last Will specifically names the other spouse as executor or personal administrator.

V. Debts. Each party shall pay any and all debts incurred by the party prior to solemnization of the marriage from the party's Separate Property. Further, each party agrees to indemnify the other for any damages or losses incurred by the other party relative to the pre-marriage debts that were not his or hers.

VI. Financial Disclosure. Each party has submitted summary financial information attached hereto as Schedule A. Each party acknowledges an opportunity to view said financial information prior to execution of this document and to inquire further as to the financial information provided by the other; however, the signing of this agreement does not in any way constitute a waiver of the right of full disclosure regarding the other party's financial position.

VII. Integration. This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. All prior agreements, and covenants, express or implied, oral or written, with respect to the subject matter hereof, are contained herein and are hereby superseded by this agreement. The term "subject matter hereof", as used in this paragraph, expressly includes (among other things) matters of alimony, property settlement, spousal support, and promises by one party to transfer money, property or an asset of any kind to the other party in the future. This is an integrated agreement.

VIII. Binding on Successors. Each and every provision hereof shall inure to the benefit of and shall be binding upon the heirs, assigns, personal representatives, and all successors in the interest of the parties.

IX. Severability. In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement

shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

X. Modification. This Agreement may be modified, superseded, or voided only upon the written agreement of the parties. Further, the physical destruction or loss of this Agreement shall not be construed as a modification.

XI. Acknowledgements. Each party acknowledges that he or she has had an adequate opportunity to read and study this Agreement, to consider it, to consult with attorneys if he or she has so desired, without any form of coercion, duress or pressure.

XII. State Law. It is intended that this Agreement be valid and enforceable under the laws of the state of Illinois, and that the laws of this state shall govern the agreement's interpretation.

Definition of Terms Applicable to this Agreement:

As used in this agreement, the following terms shall the designated definition:

- A. "Consulted with an attorney" means an instance of a party having shown the prenuptial agreement to an individual licensed to practice law in any state of the United States (or the District of Columbia) **and** having received comments of any kind from said attorney regarding the prenuptial agreement prior to the time the agreement was signed by said party.
- B. "Debts" means all liabilities and claims of a monetary nature that any party may possess against you such as a bank loan, credit card debt, tax debts including contingent debts. The term "debts", in our agreement forms, encompasses "contingent" claims for which fault or a value have not, as yet, been determined.
- C. "Common or family expenses" means those expenses, incurred during the marriage and prior to either party filing for divorce or legal separation, described as follows: utilities, upkeep, maintenance, insurance, and taxes related to the family dwelling place and any jointly owned property.
- D. "Future appreciation" means the value by which property increases over time. For example, if a prenuptial agreement is executed in 2001 and it is estimated that 100 shares of Widget.com, Inc. are then worth \$5000 which are listed as the separate property of Party A and, further, the 100 shares of Widget.com, Inc. rise in value to \$25,000 by year 2010, then the \$20,000 appreciation in value of Widget.com, Inc. shares during the period 2001 to 2010 (while the parties are married) is still separate property of Party A as defined in this agreement.
- E. "Retirement Plans and Accounts" means any employer sponsored pension, profit-sharing, stock bonus or other retirement plan and 401(k), IRA, and other tax deferred accounts that qualify for special federal income tax treatment under Internal Revenue Code Sections 401, 403, or 408 (or equivalent statutes).
- F. "Separate property" is defined as property over which a party shall separately (or independently) retain all rights and interests (including, but not limited to, against claims of community property or quasi-community property rights under state law) and including future appreciation of said property. "Separate property" is further defined in paragraph II of the agreement and, should there be a perceived conflict between this definition and paragraph II, the language of paragraph II controls.

Schedule A
Summary Financial Statements of the Parties

A.	ASSETS	LISA RENEE SMITH Estimated Fair Market Value	RICARDO MONTOBAN, JR. Estimated Fair Market Value
1	Cash	\$2,000	\$100
2	Stocks, bonds, and marketable securities	\$50,000	\$0
3	Closely held business interest	n/a	n/a
4	Home Equity	\$100,000	n/a
5	Other Real Estate	n/a	n/a
6	IRAs	\$10,000	n/a
7	Other Retirement Assets	n/a	n/a
8	Trust assets	n/a	n/a
9	All other assets	n/a	\$3,000
	TOTAL ASSETS	\$162,000	\$3,100
B.	DEBTS	LISA RENEE SMITH	RICARDO MONTOBAN, JR.
10	Credit Card Debt	\$0	\$1,000
11	Tax Debts	n/a	n/a
12	Other Debts	n/a	n/a
	TOTAL DEBTS	\$0	\$1,000
C.	DESCRIPTION OF TOP ASSETS	LISA RENEE SMITH	RICARDO MONTOBAN, JR.
13	Lisa Renee Smith's Top Assets:		
	Home	\$100000	
	Account at Merrill Lynch	\$50000	
14	Ricardo Montoban, JR.'s Top Assets:		
	Clothes		\$3000
D.	TAX INCOME OF PARTIES	LISA RENEE SMITH	RICARDO MONTOBAN, JR.
	2003 TAX YEAR	\$100000	\$20000
	2002 TAX YEAR	\$95000	\$15000
	2001 TAX YEAR	\$90000	\$15000

- **No waiver of full disclosure nor agreement to financial representations of other party.** The values placed in above table are the representation of the party designated **only**. The signing of this agreement does not in any way constitute an agreement to the above financial representations of the other party nor act as a waiver of the right to full disclosure regarding the other party's financial position.

(Note: This page is **not** to be attached to your Prenuptial Agreement.)

INSTRUCTIONS REGARDING EXECUTION OF YOUR PRENUPTIAL AGREEMENT

- A. We recommend that you execute two originals of your Prenuptial Agreement with one to be given to each party.
- B. **Witnesses / Notary.** Prenuptial Agreements in the states of Louisiana, Minnesota, and New York must be notarized. In the state of Minnesota, two witnesses must sign in addition to the document being notarized. In state of Missouri, prenuptial agreements must either be notarized or signed by one of more witnesses (we recommended 2 witnesses).
- C. **Financial Statement, Schedule A.** Before executing your Prenuptial Agreement, both parties are urged to review not only their own financial statement for accuracy but also that of the other party. If the financial statements are materially inaccurate, it will effect the validity of the agreement.
- D. Please take note of Paragraph VI. above entitled "Integration". What that paragraph means is that this written agreement encompasses all promises between the parties concerning all the matters covered in this agreement including the following topics: "alimony, property settlement, spousal support, and promises by one party to transfer money, property or an asset of any kind to the other party in the future." By using the term "integrated", this contract is stating that there are no other agreements or promises between the parties on the aforementioned topics except those contained in this agreement.
- E. **Where do I get a notary?** Your local bank, your insurance agent, or your stock broker are the best place to find a notary. If these locations do not work for you, please consult your local Yellow Pages which has them listed under "notaries public".
- F. **What if I decide to make changes to my document?** We will keep your responses to the online questionnaire in our database for 60 days after the date of purchase. You may go to the User Administration section of our site to call up your form questionnaire and make changes—the URL is <https://www.medlawplus.com/user/> . You shall need your "user name" and "password" to re-enter the system. Once in the User Administration area, click on the text link to your form questionnaire which is located on the upper-left of the page. Make the desired changes to your responses in the questionnaire and submit to create a revised document. If you have problems calling up your old data, email us at administrator@medlawplus.com. We do our best to give a prompt response to all inquiries, usually within a few hours. NOTE: Upon registration, our system emailed to you our record of your "user name" and "password".

DISCLAIMER

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