

DIVORCE

Kelly McClure, The McClure Law Group

I am planning on getting married soon. How soon I should start the process of getting a prenuptial agreement?

Future spouses may enter into a premarital agreement any time prior to their marriage. The complexity of the drafting of a premarital agreement is often directly proportional to the complexity of the estates of the future spouses. It is important to consult with an attorney regarding drafting, reviewing, and negotiating the terms of a premarital agreement, which will include terms for potential division of assets and liabilities, as early as possible and ideally as soon as the engagement to be married commences, if not before. Finalizing the terms of a premarital agreement early on will reduce added stress near the time of the marriage ceremony, deter the risk of the ceremony not occurring, and will minimize the chance of a spouse prevailing on any future claim that the agreement was signed involuntarily.

If I delete all my emails, can my spouse still find them?

Simply put, yes. When trying to delete something that is electronically stored, rarely does deleting the file ever completely delete it. Tools exist and are frequently used which can gather metadata, small bits of information about the email and its contents that can aid someone in learning about who a person associates with and what they might talk about without ever having the actual email. There are, however, alternatives to the normal everyday email services which can safeguard personal privacy and security such as ProtonMail, Tutanota, or HushMail. These services provide end-to-end encryption and “self-destructing” emails which makes tracing the message contents or gath-

ering the metadata virtually impossible. It is also important to be cognizant of potential claims that you are spoliating evidence if you intentionally delete your e-mails while you are in litigation.

Is it true my wife will be awarded custody of our child because she is the mother?

No. Section 153.003 of the Texas Family Code provides that the court cannot discriminate based on the sex of a parent, but only look to his or her qualifications as a parent. Our law firm has represented many fathers who were awarded custody based on their individual circumstances. If you anticipate having a custody dispute with the other parent of your child(ren), then you should strongly consider hiring an attorney who is Board Certified in Family Law by the Texas Legal Board of Legal Specialization.

Will the new 2017 tax laws affect my future or potential divorce?

Yes, if your divorce involves alimony. The tax law eliminates the deduction for alimony payments, which have become a useful tool when it comes to incentivizing settlement with alimony terms. Currently, alimony offers an above-the-line deduction to the payor and is taxable to the recipient. This deduction allows the income of the paying party (typically the higher earner) to receive a tax deduction for the alimony payments made. Under the new law, however, the payor will not receive a deduction for payments, and the recipient will not have to include the payments as income. The law will affect only divorce decrees, separation agreements, and alimony modifications entered into after 2018.

About the Expert

Armed with more than 25 years of experience as a family law attorney, Kelly McClure is Family Law Board Certified by the Texas Board of Legal Specialization. She works passionately for desirable outcomes in complex divorces, custody matters, division of assets, pre- and post-marital agreements, and other family law matters. An advocate in the collaborative law movement, McClure offers clients the option of a collaborative approach to protect privacy and reduce the financial and emotional burdens that can come with litigation. However, if litigation is necessary, McClure's tough, no-nonsense demeanor and dynamic presence make her a powerhouse in the courtroom. McClure began her career practicing tax law. This experience complements her ability to delve into the tax implications of a divorce and handle complex property cases. McClure has been named among the Best Lawyers in Dallas by D Magazine 14 times since 2003 and as a Texas Super Lawyer by Thomson Reuters for 15 years since 2003. Additional recognition includes 2016 Top 50 Female Attorneys in Texas by Thomson Reuters' Super Lawyers and 2017 Most Dynamic Women in Dallas by Modern Luxury.



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