9. LEGAL ISSUES AND AGREEMENTS

9.1 Introduction

We all acknowledge that marriage is first and foremost a sacred covenant made to and before God. In addition, marriage is *also* a legal and binding contract recognized and enforced by the secular state. Families are built and maintained around the legal framework created by this contract. Many people in effect "sign" this marriage contract without really fully understanding what they are signing and without having any knowledge whatsoever about its legal implications. In some cases, if they knew more about what they were agreeing to, they would think *much* harder about the person they married. The result would probably be a lower divorce rate if people were more careful about getting married.

People often will get divorced because their expectations about marriage have been violated. Interestingly, however, many people are often unwilling to reveal what those expectations are to their prospective spouse for fear of being rejected. Pre-nuptial agreements are helpful and indispensable in further defining the relationship so that the spouses more completely understand the expectations that each has of the relationship. This has the effect of strengthening the relationship.

Many people believe that pre-nuptial agreements make divorce easier to get. As a matter of fact, we would argue that they should make it *harder* to get divorced for Christians, because divorce violates God's word except where there is sexual immorality (see section 4.14 earlier). The secular state, however, doesn't care whether sexual immorality has occurred in most cases. Most states now have no-fault divorce laws, which we believe just encourages divorce, as the statistics in section 4.14.3 so clearly point out. This effect has clearly torn our society apart at its seams because it quite plainly violates God's word and His will. Some states have enacted the concept of two different types of marriage: 1. Regular marriage; 2. Covenant Marriage. Covenant Marriage is MUCH more difficult to end or divorce out of than regular marriage and is reserved and used mainly by Christian couples. The covenant marriage concept has come out of the Christian conservative community, in fact. One purpose that a pre-nuptial agreement should fill would be to extend the marriage agreements to make a regular marriage into a covenant marriage, for instance. That is precisely the intent of this section and this entire document, as we pointed out in section 1.1: Purpose of this Document.

Another interesting fact is that being a Christian doesn't necessarily lead to a lower divorce rate. As a matter of act, scientific research by George Barna of Barna Research (http://www.barna.org) reveals that the divorce rate among born-again Christians is HIGHER, not lower, than non-religious people! Below are the findings:

> *"(Ventura, CA) Divorce may not be popular, but it remains common in America. A new study by the Barna Research Group (Ventura, CA) shows that one out of every four Americans adults have experienced at least one divorce.*
>
> *One of the surprising outcomes to emerge from the study is that born again Christians are more likely to go through a marital split than are non-Christians.*
>
> *Using statistics drawn from nationwide survey interviews with nearly 4000 adults, the data show that although just 11% of the adult population is currently divorced, 25% of all adults have experienced at least one divorce during their lifetime. Among born again Christians, 27% are currently or have previously been divorced, compared to 24% among adults who are not born again. (Because of the large sample size involved, that difference is statistically significant.)*

Who Gets Divorced?

What may be just as surprising are some of the statistics related to various population groups. For instance, while Baby Boomers have been widely criticized for their selfishness and their inattention to family needs in favor of career pursuits, the generation for which divorce is most prevalent is not the Boomers but the generation that preceded them – the Builders. Thirty seven percent of the adults from that generation, who are presently from 53 to 72 years of age, have endured a divorce, compared to 34% among Boomers. In fact, one might argue that it was Builders who initially popularized divorce. Evidence of that is found in a comparison of the incidence of divorce among the Builders (37%) and among those of the generation that preceded them (the Seniors – 18%). To date, only 7% of Busters have been divorced, but that is largely because most of them have yet to be married for the first time.

Other surprises included regional, ethnic and denominational differences. Divorce is much less likely in the Northeast than elsewhere. Only 19% of the residents of the Northeast have been divorced, compared to 26% in the West and 27% in both the South and the Midwest. A higher proportion of whites gets divorced (27%) than is true among African-Americans (22%) or Hispanics (20%). The eye-opener is that only 8% of Asians get divorced – just one-third the incidence found among whites.

Among the characteristics that do not seem to be related to divorce are educational achievement, household income, and political ideology.

Faith and Divorce

Surprisingly, the Christian denomination whose adherents have the highest likelihood of getting divorced are Baptists. Nationally, 29% of all Baptist adults have been divorced. The only Christian group to surpass that level are those associated with non-denominational Protestant churches: 34% of those adults have undergone a divorce. Of the nation's major Christian groups, Catholics and Lutherans have the lowest percentage of divorced individuals (21%). People who attend mainline Protestant churches, overall, experience divorce on par with the national average (25%).

Among non-Christian groups the levels vary. Jews, for instance, are among those most likely to divorce (30% have), while atheists and agnostics are below the norm (21%). Mormons, renowned for their emphasis upon strong families, are no different than the national average (24%).

A related survey recently completed by Barna Research among a nationwide sample of Protestant senior pastors showed that just 15% of pastors have ever been divorced."[13]

In spite of the many requirements God has revealed about the marriage relationship in the Bible to we who are believers as revealed in section 4, we still refuse to obey what he has commanded and end our marriages in divorce even more often than non-believers! Hence, the need for pre-nuptial agreements for those people who are contemplating marriage seriously, and especially among Christians, who have a higher, not lower, divorce rate than the general population.

9.2 Religious Freedom in the Public Schools

[13] http://www.barna.org/cgi-bin/PagePressRelease.asp?PressReleaseID=39; Dec. 21, 1999;Barna Research; 5528 Everglades St.;Ventura, CA 93003 Voice: (805) 658-8885;Fax: (805) 658-7298.

This section discusses religious freedom in the public, government-funded and run schools. It does not address religious freedom in private schools because there are no constraints on religion in private schools.

9.2.1 The First Amendment

The First Amendment of the United States Constitution provides that "Congress shall make no law . . . prohibiting the free exercise of religion." [14] This provision is commonly know as the Free Exercise Clause. The Supreme Court has held that this measure safeguards all religious beliefs but not all the ways that individuals might act on those beliefs.[15] For example, the Supreme Court held that the Constitution protects the Mormon's right to believe in polygamy but not the right to engage in that practice. [16]

The historical controversy surrounding the Free Exercise Clause centers on whether the state must exempt individuals from laws or policies that conflict with their religious beliefs, or simply treat religious people on an equal footing with nonreligious people.[17] Until recently, the Supreme Court held that the Free Exercise Clause requires the government to accommodate religious persons when state law or policy burdened religious beliefs or actions.[18] The government could refuse to accommodate such persons only if protecting a compelling government interest by the least restrictive means.[19]

In 1990, the Supreme Court adopted a different position on the parameters of the Free Exercise Clause.[20] In Employment Division V. Smith, the Court held that, as long as a government policy or law is neutral and generally applicable, the government need not accommodate religious people whose beliefs conflict with such policy or law.[21] In other words, as long as the state does not intend to discriminate against religious people when it adopts a law or policy, the state does not offend the Free Exercise Clause.

The Smith approach differs drastically form the accommodation view of the Free Exercise Clause, under which courts found constitutional violations even where government action or policy created only unintentional or incidental burdens on religious beliefs.[22] Under the Smith approach, however, burdens must be direct and intentional to amount to constitutional problems.[23]

9.2.2 The Establishment Clause

[14] *U.S. Constitution*, Amendment 1.
[15] Reynolds v. Unites States, 98 U.S. 145, 164 (1878).
[16] See id.
[17] See generally Michael McConnel, Origins of the Fre Exercise Clause, 103 Harv. L Rev. 1409 (1990).
[18] See generally Sherbert V. Verner, 374 U.S. 398 (1963).
[19] Id, at 406-07.
[20] Employment Divisoin v. Smith, 494 U.S. 872, reh'g denied, 496 U.S. 913 (1990)
[21] See generally id.
[22] See McConnell, Origins of the Free Exercise Clause, 103 Harv. L. Rev. at 1418.
[23] See id.

Invariably, school administrators cite the Establishment Clause to justify any interference with religious speech or activity in the public schools. This constitutional measure provides that "Congress shall make no law respecting an establishment of religion."[24]

Since the early 1960's, when the United States Supreme Court decided the public school prayer cases, widespread misconceptions have existed concerning the role of religion and religious activity in public education. Often religious persons face discrimination or outright hostility in the public education system. School officials have told individuals that they may not pray or talk about religion while in school, even by themselves and on their own time. Supreme Court precedent, however, dictates otherwise.

Every United States Supreme Court decision condemning religious activity in public schools has involved state-directed and state-sponsored religious activity. While the Supreme Court has held that the state may not prescribe religious activities, it has never ruled that individual religious expression in public schools is unconstitutional. Courts have expressly acknowledged the difference between individual religious speech and government-endorsed religious expression: "[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clause protect."[25]

Government involvement in religion, however, raises concerns under the Establishment Clause. Courts use the often criticized but never overruled test articulated in Lemon v. Kurtzman to determine whether school interaction with religion is permissible.[26] Under this framework, a school policy is constitutional if it: (1) has a secular purpose; (2) has a primary effect which neither advances nor inhibits religion, and (3) does not create an excessive entanglement with religion.[27]

The Supreme Court has identified only seven specific practices as unconstitutional establishment of religion in public schools:

1. State-directed and required on-premises religious training.[28]
2. State-directed and required prayer.[29]
3. State-directed and required Bible reading.[30]
4. State-directed and required posting of the Ten Commandments.[31]
5. State-directed and authorized "periods of silence" for meditation and voluntary prayer, where the legislative intent is to promote or advance religion.[32]
6. State-directed and required teaching of scientific creationism.[33]
7. State-directed prayer led by clergy at public high school graduation and promotion ceremonies.[34]

9.2.3 Freedom of Association

[24] U.S. Constitution, Amend. 1
[25] Board of Educ. v. Mergens, 496 U.S. 226, 252 (1990) (Plurality opinion).
[26] Lemon v. Kurtzman, 403 U.S. 602 (1971).
[27] Id at 612-13.
[28] McCollum v. Bd. of Educ., 333 U.S. 203 (1948).
[29] Engel V. Vitale, 370 U.S. 431 (1962).
[30] Abington Sch. Dist. v. Schempp, 374 U.S. 203 (1963).
[31] Stone V. Graham, 449 U.S. 39, reh'g denied, 449 U.S. 1104 (1981).
[32] Wallace v. Jaffree, 472 U.S. 38 (1985).
[33] Edwards v. Aguillard, 482 U.S. 38 (1985).
[34] Lee v. Weisman, 505 U.S. 577 (1992). The debate over the constitutionality of student-initiated prayer continues.

The Supreme Court has recognized an inherent general freedom of association within the First Amendment. [35] The Supreme Court has acknowledged two types of association: private and expressive. [36]

The freedom of private association safeguards "an individual's choice to enter into and maintain certain intimate or private relationships." form unwarranted government intrusion.[37] Such associations include marriage, child-rearing, and relationships that "presuppose 'deep attachments and commitments to the necessary few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life.'"[38]

The freedom of expressive association allows "individuals to associate for the purpose of engaging in protected speech or religious activities."[39] The Court has held that "[t]he Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties."[40] Students meeting for a religious club would fall under this category.

9.2.4 Right to Know

A plurality of the Supreme Court has held that the right to know is an "inherent corollary of the right of free speech."[41] The plurality held that students have the right "to inquire, to study and to evaluate, to gain new maturity and understanding."[42]

Courts, however, treat this right differently depending on the context. For example, courts typically disfavor school attempts to restrict student access to materials.[43] These cases generally arise when schools seek to remove controversial books from their libraries. In Board of Education v. Pico, [44] a plurality of the Unites States Supreme Court held that school administrators cannot remove books from the library "simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'"[45]

Although plurality opinions of the Supreme Court do not serve as binding precedent, most courts examining similar fact patterns use the Pico plurality as their chief guideline. Under Pico, a school's underlying motivation for removing books should be the focus of any judicial inquiry.[46] If schools remove books because of the "pervasively vulgar content" or unsuitable educational nature, courts will find their motivation constitutional.[47] School officials who fail to follow established policy for removing books provide evidence of an improper motive.[48] and courts will look unfavorably on such decisions in order to safeguard the students' right to know.

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[35] Roberts V. United States Jaycees, 468 U.S. 609, 622-23 (1984).
[36] Board of Directors of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 544-45 (1987).
[37] Id. at 544.
[38] Id. at 545 (quoting Roberts v. Jaycees, 468 U.S. at 619-20).
[39] Id.
[40] Roberts v. Jaycees, 468 U.S. at 618.
[41] See Board of Educ. V. Pico. 457 U.S. 853, 867 (1982) (plurally)
[42] Id. at 868-69 (plurality opinion).
[43] See e.g., Pico, 457 U.S. at 868-69 (plurality opinion); Campbell v. St. Tammany Parish Sch. Bd., 64 F.3d 184 (5th Cir. 1995); Case v. United Sch. Dist. No. 233, 908 F. Supp. 864 (D. Kan.1995).
[44] 457 U.S. 853.
[45] Id.. at 872 (pluraity opinion).
[46] Id. see also Campbell, 64 F.3d at 188-89.
[47] Pico, 457 U.S. at 870-72 (plurality); see also Campbell, 64 F.3d at 188.
[48] Id. at 876.

Courts use a different standard of review for schools' curricula decisions.[49] The Seventh Circuit Court of Appeals has held that students questioning the legality of curricula decisions must "cross a relatively high threshold before entering upon the field of constitutional claim suitable for federal court litigation."[50] Courts typically defer to school judgment in these matters.[51] For example, a federal district court upheld a schools' decision not to add the film *Schindler's List* to its curriculum because of it R rating.[52] The Eleventh Circuit Court of Appeals found constitutional a school's decision to stop using a textbook because of its vulgar nature.[53]

However, this deferential position does not invariably produce victories for schools. In Pratt v. Independent School District No. 831, the Eighth Circuit Court of Appeals invalidated a school's decision to remove a film from its curriculum.[54] The court noted that although schools enjoy substantial discretion in curriculum matters, they do not have an absolute right to remove materials from their curricula.[55] Th court struck down the school's removal of the film because the school's administrators based their decision on their own personal values, not on the violent content of the film.[56]

9.3 Five Reasons Why Christians Should *Not* Obtain a State Marriage License[57]

Every year thousands of Christians amble down to their local county courthouse and obtain a marriage license from the State in order to marry their future spouse. They do this unquestioningly. They do it because their pastor has told them to go get one, and besides, "everybody else gets one." This section attempts to answer the question - *why should we not get one?*

9.3.1 REASON #1. The definition of a "license" demands that we not obtain one to marry.

Black's Law Dictionary defines "license" as, *"The permission by competent authority to do an act which without such permission, would be illegal."* We need to ask ourselves- why should it be illegal to marry without the State's permission? More importantly, why should we *need* the State's permission to participate in something which God instituted (Gen. 2:18-24)? We should not need the State's permission to marry nor should we grovel before state officials to seek it. What if you apply and the State says "no"? You must understand that the authority to license implies the power to prohibit. A license by definition "confers a right" to do something. The State cannot grant the right to marry. It is a God-given right. Likewise, there isn't a state in the union that can or does prohibit marriage either.

One might say that there is *one* thing that the marriage license *does* allow which would otherwise we illegal, and that one thing is the right of one greedy and selfish spouse hide community property under the care of someone else, drag the other spouse into court, and then make false allegations (lies) of

[49] See e.g., Virgil v. School Bd., 862 F.2d 1517 (11th Cir. 1989); Zykan v. Warsaw Community Sch. Corp., 631 F.2d 1300, 1306 (7th Cir. 1980); Borger v. Bisciglia, 888 F. Supp. 97, 99-100 (E.D. Wis. 1995).
[50] Zykan, 631 F.2d at 1306.
[51] See Borger, 888 F. Supp. at 99-100.
[52] Borger. 888 F. Supp. 97.
[53] Virgil, 862 F.2d at 1525 (noting that students still had access to matierals in library).
[54] 670 F.2d 771 (8th Cir. 1982).
[55] Id.at 776.
[56] Id,at 778
[57] Pastor Matt Trewhella, http://www.mercyseat.net/BROCHURES/marriagelicense.htm.

domestic abuse to engender court sympathy. Is this the only kind of thing you want to license by giving the state control over your marriage? These vindictive spouses then have their spouse kicked out of his or her own house based on the unwarranted presumption of domestic violence and then use the legal system to vindictively destroy them financially by enslaving that spouse financially to their lawyer (family law attorneys cost about $225/hour). Then they use the court to legally steal all the remaining unhidden assets by dividing separate property and the appreciation on that separate property in half. This process sets a very bad example for the children, creates fear and anxiety in both spouses, and enriches family law attorneys and the spouses for lying about each other to gain an advantage, but accomplishes no good whatsoever.

Another interesting outcome of divorce is that the anxiety and fear it creates in spouses who have gone through it has the effect of preventing people from ever being willing to marry again in order to avoid a very painful repetition of this kind of insane experience. These divorced spouses who don't remarry then are encouraged to seek means other than marriage to get their sexual and emotional needs met. The only option available to them is then to fornicate and live in sin without a commitment or a marriage license. The media and our worldly culture promotes this stereotypical lifestyle, so they get trapped in it and end up unhappy, feeling guilty, and defensive and combative over their choice of lifestyle. Fornication as a cure for not getting married is worse than the disease (of divorce) from a biblical perspective, especially for any illegitimate children and abortions (murder) that might result from such a choice of sinful lifestyle, because the bible says fornication is a sin.

If these discouraged divorcees do take the chance and get remarried, the divorce rate is actually higher for second marriages than it is for first marriages! First marriages end in divorce approximately 55% of the time in California. Second marriages end in divorce 60% of the time! To make things worse, who wants to raise someone else's children and not have any of their own? That is why we say that people don't learn anything from divorce after they have their first one. They don't use that experience as a way to grow spiritually and become less selfish and prideful. Instead, they just get more selfish, arrogant, and argumentative because they are more adept at playing the litigation game and using marriage to gain financial advantage. How can we say that people more often than not use marriage to gain financial advantage and that their inordinate focus on money is at the root of the divorce problem? Because statistics point to the fact that the number one cause of arguments and divorce is related to arguments over money in the marriage! The number two cause of arguments and divorce is related to sex, and they probably argue about that, I'm guessing, because men like sex more than women, so men feel unfulfilled in marriage when they marry a spouse who won't submit in the biblical sense, as we talked about in section 4.8.5.2: The Four Laws of Sexual Satisfaction In Marriage.

We don't want to paint such a gloomy picture here, but we're trying to use the truth to emphasize that your character and that of the person you marry is the most important predictor of whether the two of you will stay married, and that character has to be based on a shared faith and strong and equal commitment to godly principles if your relationship is to survive the test of time! We pointed this out in section 4.8.1: Common Spiritual Beliefs and Faith and won't belabor it further here.

9.3.2 REASON #2. When you marry with a marriage license, you grant the State jurisdiction over your marriage.

When you marry with a marriage license, your marriage is a creature of the State. It is a corporation of the State! As a matter of fact, most states treat married spouses as the equivalent of business partners with a fiduciary duty towards each other insofar as property and custody issues are concerned.

Therefore, they have jurisdiction over your marriage including the *fruit* of your marriage. What is the fruit of your marriage? Your children and every piece of property you own. There is plenty of case law in American jurisprudence which declares this to be true.

In 1993, parents were upset here in Wisconsin because a test was being administered to their children in the government schools which was very invasive of the family's privacy. When parents complained, they were shocked by the school bureaucrats who informed them that their children were required to take the test by law and that they would *have* to take the test because they (the government school) had jurisdiction over their children. When parents asked the bureaucrats what gave them jurisdiction, the bureaucrats answered, "your marriage license and their birth certificates." Judicially, and in increasing fashion, practically, your state marriage license has far-reaching implications.

9.3.3 REASON #3. When you marry with a marriage license, you place yourself under a body of law which is immoral.

By obtaining a marriage license, you place yourself under the jurisdiction of Family Court which is governed by unbiblical and immoral laws. Under these laws, you can divorce for any reason. Often, the courts side with the spouse who is in rebellion to God, and castigate the spouse who remains faithful by ordering him or her not to speak about the Bible or other matters of faith when present with the children, even if those matters of faith promote continuance and strengthening of the marriage.

Ministers cannot in good conscience perform a marriage which would place people under this immoral body of laws. They also cannot marry someone with a marriage license because to do so they have to act as an agent of the State, and this violates the law regarding separation of church and state! The minister would have to sign the marriage license, and then have to mail it into the State. Given the State's demand to usurp the place of God and family regarding marriage, and given it's unbiblical, immoral laws to govern marriage, it would be an act of treason for ministers to do so.

9.3.4 REASON #4. The marriage license invades and removes God-given parental authority.

When you read the Bible, you see that God intended for children to have their father's blessing regarding whom they married. Daughters were to be *given* in marriage *by their fathers* (Deut. 22:16; Ex. 22:17; I Cor. 7:38). We have a vestige of this in our culture today in that the father takes his daughter to the front of the altar and the minister asks, "Who *gives* this woman to be married to this man?"

Historically, there was no requirement to obtain a marriage license in colonial America. When you read the laws of the colonies and then the states, you see only two requirements for marriage. First, you had to obtain your parents permission to marry, and second, you had to post public notice of the marriage 5-15 days before the ceremony.

Notice you had to obtain your *parents permission*. Back then you saw godly government displayed in that the State recognized the parents authority by demanding that the parents permission be obtained. Today, the all-encompassing ungodly State demands that *their* permission be obtained to marry.

By issuing marriage licenses, the State is saying, "You don't need your parents permission, you need *our* permission." If parents are opposed to their child's marrying a certain person and refuse to give their permission, the child can do an end run around the parents authority by obtaining the State's permission, and marry anyway. This is an invasion and removal of God-given parental authority by the State.

9.3.5 REASON #5. When you marry with a marriage license, you are like a polygamist.

From the State's point of view, when you marry with a marriage license, you are not just marrying your spouse, but you are also marrying the State.

The most blatant declaration of this fact that I have ever found is a brochure entitled "With This Ring I Thee Wed." It is found in county courthouses across Ohio where people go to obtain their marriage licenses. It is published by the Ohio State Bar Association. The opening paragraph under the subtitle "Marriage Vows" states, *"Actually, when you repeat your marriage vows you enter into a legal contract. There are three parties to that contract. 1.You; 2. Your husband or wife, as the case may be; and 3. the State of Ohio."*

You see, the State and the lawyers know that when you marry with a marriage license, you are not just marrying your spouse, you are marrying the State! You are like a polygamist! You are not just making a vow to your spouse, but you are making a vow to the State and your spouse. You are also giving undue jurisdiction to the State.

9.3.6 When Does the State Have Jurisdiction Over a Marriage?

God intended the State to have jurisdiction over a marriage for two reasons - 1). in the case of divorce, and 2). when crimes are committed i.e., adultery, bigamy. etc. Unfortunately, the State now allows divorce for any reason, and it does not prosecute for adultery.

In either case, divorce or crime, a marriage license is *not* necessary for the courts to determine whether a marriage existed or not. What is needed are witnesses. This is why you have a best man and a maid of honor. They should sign the marriage certificate in your family Bible, and the wedding day guest book should be kept.

Marriage was instituted by God, therefore it is a God-given right. According to Scripture, it is to be governed by the family, and the State only has jurisdiction in the cases of divorce or crime.

9.3.7 History of Marriage Licenses in America

George Washington was married *without* a marriage license. Abraham Lincoln was married *without* a marriage license. So, how did we come to this place in America where marriage licenses are issued?

Historically, all the states in America had laws outlawing the marriage of blacks and whites. In the mid-1800's, certain states began allowing interracial marriages or miscegenation as long as those marrying received a license from the state. In other words they had to receive *permission to do an act which without such permission would have been illegal.*

Blacks Law Dictionary points to this historical fact when it defines "marriage license" as, *"A license or permission granted by public authority to persons who intend to intermarry."* "Intermarry" is defined in Black's Law Dictionary as, *"Miscegenation; mixed or interracial marriages."*

Give the State an inch and they will take a 100 miles (or as one elderly woman once said to me "10,000 miles.") Not long after these licenses were issued, some states began requiring *all* people who marry to obtain a marriage license. In 1923, the Federal Government established the Uniform Marriage and Marriage License Act (they later established the Uniform Marriage and Divorce Act). By 1929, every state in the Union had adopted marriage license laws.

9.3.8 What Should We Do?

Christian couples should not be marrying with State marriage licenses, nor should ministers be marrying people with State marriage licenses. Some have said, "If someone is married without a marriage license, then they aren't really married." Given the fact that states may soon legalize same-sex marriages, we need to ask ourselves, "If a man and a man marry *with* a State marriage license, and a man and woman marry *without* a State marriage license - *who's really married?* Is it the two men *with* a marriage license, or the man and woman *without* a marriage license? In reality, this contention that people are not really married unless they obtain a marriage license simply reveals how Statist we are in our thinking. We need to think biblically.

You should not have to obtain a license from the State to marry someone anymore than you should have to obtain a license from the State to be a parent, which some in academic and legislative circles are currently pushing to be made law.

When I marry a couple, I always buy them a Family Bible which contains birth and death records, and a marriage certificate. We record the marriage in the Family Bible. What's recorded in a Family Bible will stand up as legal evidence in any court of law in America. Both George Washington and Abraham Lincoln were married without a marriage license. They simply recorded their marriages in their Family Bibles. So should we.

(Pastor Trewhella has been marrying couples without marriage licenses for ten years. Many other pastors also refuse to marry couples with State marriage licenses.

This section is not comprehensive in scope. Rather, the purpose of this section is to make you think and give you a starting point to do further study of your own. **If you would like an audio sermon regarding this matter, just send a gift of at least five dollars in cash to: Mercy Seat Christian Church 10240 W. National Ave. PMB #129 Milwaukee, Wisconsin 53227.**

9.4 Fiduciary Duty

The California Family Code, section 721, says the following about the financial responsibilities that married spouses have toward each other:

> 721. (a) Subject to subdivision (b), either husband or wife may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried. (b) Except as provided in Sections 143, 144, 146, and 16040 of the Probate Code, in transactions between themselves, a husband and wife are subject

to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of non-marital business partners, as provided in Sections 15019, 15020, 15021, and 15022 of the Corporations Code, including the following:

(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.
(2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.
(3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property.

The California Family Code section 1101 also says about this fiduciary duty the following:

(a) A spouse has a claim against the other spouse for a breach of the fiduciary duty imposed by Section 1100 or 1102 that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate.

(b) A court may order an accounting of the property and obligations of the parties to a marriage and may determine the rights of ownership in, the beneficial enjoyment of, or access to, community property, and the classification of all property of the parties to a marriage.

(c) A court may order that the name of a spouse shall be added to community property held in the name of the other spouse alone or that the title of community property held in some other title form shall be reformed to reflect its community character, except with respect to any of the following:

(1) A partnership interest held by the other spouse as a general partner.
(2) An interest in a professional corporation or professional association.
(3) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.
(4) Any other property, if the revision would adversely affect the rights of a third person.

(d)

(1) Except as provided in paragraph (2), any action under subdivision (a) shall be commenced within three years of the date a petitioning spouse

had actual knowledge that the transaction or event for which the remedy is being sought occurred.

(2) An action may be commenced under this section upon the death of a spouse or in conjunction with an action for legal separation, dissolution of marriage, or nullity without regard to the time limitations set forth in paragraph (1).

(3) The defense of laches may be raised in any action brought under this section.

(4) Except as to actions authorized by paragraph (2), remedies under subdivision (a) apply only to transactions or events occurring on or after July 1, 1987.

(e) In any transaction affecting community property in which the consent of both spouses is required, the court may, upon the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:

(1) The proposed transaction is in the best interest of the community.

(2) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the non-consenting spouse.

(f) Any action may be brought under this section without filing an action for dissolution of marriage, legal separation, or nullity, or may be brought in conjunction with the action or upon the death of a spouse.

(g) Remedies for breach of the fiduciary duty by one spouse as set out in Section 721 shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. However, in no event shall interest be assessed on the managing spouse.

(h) Remedies for the breach of the fiduciary duty by one spouse when the breach falls within the ambit of Section 3294 of the Civil Code shall include, but not be limited to, an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.

9.5 Record Keeping

Every member of the family is responsible for keeping and safeguarding any and all records of family finances for a period of at least 7 years. They are entitled to keep those records under lock and key. However, if they are the only one with the key, they are expected and required to provide copies of the locked up documents or electronic versions to the other spouse so that he/she may also be informed of the condition of family finances.

9.6 Asset and Liability Inventory at the Time of Marriage

The California Family Code sections 130 and 752 define separate property as follows:

> 130: "'Separate property' is property that is separate property under Part 2 (commencing with Section 760) of Division 4."
>
> 752: "Except as otherwise provided by statute, neither husband nor wife has any interest in the separate property of the other.

Below is a list of the financial and property assets and liabilities to be treated as separate property at the time or marriage. The parties to this constitution swear to God and affirm that this account is true, correct, and complete to the best of their ability:

Table 9-1: Assets and Liabilities Going Into Marriage

#	*Description*	*Type: Asset/Liability*	*Manufacturer/Model/ Account #*	*Date of Purchase*	*Fair Market Value (FMV)*
1					
2					
3					
4					
5					
6					
7					
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9.7 The State of California's Default Pre-Nuptial agreement

Marriage is unlike any other area of law. In any other area of law, the only enforceable agreement between two parties is what appears in a written contract that is signed by the two parties. In family law, if you get a marriage license from the state when you get married, the state in effect writes the marriage contract and changes it frequently based on new legislation as well as rulings by the state supreme court. Worst yet, the state doesn't include with the marriage license that people sign a copy of what the spouses are agreeing to based on state law at the time they get married. This leads to a lot of confusion among people about family law, and a big windfall for lawyers who practice family law. The result is that when two people get married, *they don't find out until they get divorced*, if they get divorced, what was in their marriage contract! Do you want your sacred marriage and your future regulated by a godless secular state that promotes homosexual marriages, enslavement through high taxation, no-fault divorce at the slightest whim because of "irreconcilable differences," and whose laws are written by lawyers who look after their own by maximizing litigation? I certainly wouldn't!

Nevertheless, most people getting married in California who get state marriage licenses sign the marriage contract without ever even knowing or questioning what they are agreeing to. This leads to the interesting and entirely Christian idea, as we mentioned in section 9.3 (Five Reasons Why Christians Should Not Obtain a State Marriage License), that it probably isn't a good idea to get a marriage license from the state, but instead do it only at your church. Interestingly, there are over 1311 sections in the California Family Code at present that form the basis for the marriage contract and very few people know what is in this code, much less where to get a copy of it. However, Proverbs 18:15 advises us: "*The heart of the discerning acquires knowledge, the ears of the wise seek it out.*" Why don't more Christians want to know more about what they are getting into when they marry and get a state marriage license? I would argue that much of it has to do with hormones and impatience dominating their thought patterns, and as we all know, letting the flesh rather than the mind and the spirit operate our lives is a recipe for *disaster*. It is therefore no wonder the divorce rate is 55% in California and growing every year.

The other irony is that more people don't take their future into their own hands by writing their own marriage contract to make sure that their moral and religious beliefs aren't compromised by the state's default marriage contract. People on the one hand will buy life insurance and car insurance to protect themselves, even though the risks (or probabilities) of harm are actually lower in these cases than the risk of divorce, but when it comes to their marriages, which will end in divorce in the vast majority of cases, they just leave it at the mercy of the state legislature and the family lawyers, none of whom agree with their religious, spiritual, or moral values and whose only motive is profit at great expense. One family lawyer we talked to said that justice simply doesn't happen in the family law courtroom.

Therefore, let's take a look at California's default pre-nuptial contract for the benefit of all. I won't bore you with all the legalese or points and authorities, but here is what you would be agreeing to if you got married in the State of California at the time this document was written, which is_____, 2000:

1. *Timeframe*: It takes 6 months minimum to get a divorce. This is what is called the cool-off period. 80% of divorces in San Diego County happen within 8 months after filing.
2. *Basis for divorce*:
   2.1. Only one party has to want a divorce in order to get one, and that party can get one against the will of the other. This has the affect of encouraging divorce in most cases.

2.2. Since California is a "no-fault" divorce state, the only basis for divorce needed is "irreconcilable differences." This occurs when the spouses have reached an impasse or argument that at least one of them identifies as not being remediable through counseling.

2.3. Note that NONE of the following criteria need be proved for a divorce being granted:

2.3.1. Adultery.

2.3.2. Pedophilia

2.3.3. Physical or verbal abuse.

2.3.4. Criminal behavior.

2.3.5. Failure to abide by God's laws for marriage and divorce.

2.4. If you want your marriage to last and you want unfaithfulness punished, then you are wise to have a prenuptial agreement that has a clause that a spouse who commits adultery loses all property interests in the community.

3. <u>Legal assistance:</u>

3.1. 55% of all marriages end in divorce in California.

3.2. There are 15,000 divorces per year in San Diego County.

3.3. Over 90% of the divorce cases heard in San Diego County involve at least one party on either side who is representing himself/herself in a court of law. Such people are called Pro Pers.

3.4. The person who does not have legal representation is at a distinct disadvantage in the divorce proceeding and often gets legally and emotionally abused with underhanded tactics and chicanery by the party who has legal counsel.

3.5. Trial lawyers in California have done everything in their power to prevent pro per litigants from getting tools or information that would allow them to conduct their case effectively without the need for a lawyer. For instance:

3.5.1. Most family law attorneys are extremely reluctant to be hired to work as a "coach" and not provide a full-service arrangement whereby they do everything. This is in spite of the skill and experience level of the person who needs legal assistance. You will probably never hear such attorneys admit it, but the reason is because they want to make LOTS of money and they can't if they don't maximize their involvement in the case and provide services for which they aren't needed.

3.5.2. The procedures for bringing on an attorney to work as a "coach" to aid and assist pro-per litigants rather than represent them fully are cumbersome and not well-documented anywhere in the most prevalent family law practice guides published by such companies as the Rutter Group. I would speculate that this situation exists because once again, family law attorneys do not want to undermine their business base or reduce their profits by providing less than full-service representation.

3.5.3. The Family Law Facilitator's Office in the Family Court of San Diego County has several volunteer lawyers on their staff to help pro per litigants, but they won't help for most matters and are there primarily to market themselves to do fee-for-service legal representation at $225/hr on average.

3.5.4. The main source of information for practicing family law in California that is used by most family law lawyers is the Rutter Group Family Law California Practice Guide. This monstrosity has three volumes and about 5,000 pages of information about California Family Law and costs almost $300. It's very useful if you know anything about law, but it isn't written for pro per litigants and takes way too much energy for the typical pro per to use and understand.

3.5.5. Family law is extremely complex in California, which is a community property state. The probability that a pro per litigant will make a mistake or violate procedures and be sanctioned by the judge because of that is high.

3.5.6. The state (probably with the sponsorship of the trial lawyers association) recently passed a law that makes life much more difficult for people who write or publish computer software that automates the legal process, making it harder for pro pers to find such software and harder to manage your case.. People who publish such software now have to post a $25,000 bond, which few people can afford. This same thing is happening in other states, including Texas, where Intuit had to take its Quicken Family Lawyer off the shelves because of a lawsuit by the trial lawyers association.

3.6. BOTTOM LINE: You're smart if you avoid the need to litigate by having your own air tight marital agreement so you won't have to go into court and will get a fairer deal.

4. Spousal support:

4.1. If one of the spouses is unemployed at the time of the divorce, then the other spouse has to pay that spouse spousal support for half the length of the marriage or until that spouse finds a job, whichever occurs first.

4.2. If the parties were married ten years or longer, then the unemployed spouse is entitled to permanently collect spousal support for as long as they are unemployed.

4.3. Even though courts regularly admonish unemployed spouses to find work, irresponsible spouses frequently don't' get jobs anyway and continue to collect spousal support with impunity.

4.4. Spousal support is based on state guidelines and a percentage of the employed spouse's income.

5. *Personal Property and assets*:

5.1. California is a community property state. All income made and all property purchased during the marriage with community assets is considered community (that is shared) property.

5.2. Everything the parties came into the marriage with they are entitled walk out with as their separate property, minus any interest or appreciation.

5.3. Appreciation on separate property that is in the name of only one person and was purchased before marriage goes entirely to the original owner. Personal property that has a community title but started out as separate property at the time or marriage is also treated this way.

5.4. Property that was separate property going into the marriage is considered to be separate even if its character changed and it became community on the title, unless there was an explicit transmutation agreement between the parties that changed its character.

5.5. Appreciation on community property in the name of both parties that was purchased during the marriage with community assets is split 50-50.

5.6. Separate property can only be treated as such by the court if it can be rebutted with physical evidence or testimony that it was separate property going into the marriage. The evidence usually takes the form of account statements, title documents, income tax returns, cancelled checks, etc. Such evidence supports what is called a *traceable right of reimbursement* for the contribution of separate property for use by the community. Therefore, you are strongly admonished to:

5.6.1. Keep careful records of all separate property going into the marriage, or else the court will treat the property as community property by default.

5.6.2. Keep all separate property records and legal agreements in a separate safe deposit accessible only to you. You also might want to provide a copy of these records to your spouse.

5.6.3. Keep in mind that most businesses in California are required to keep financial records for no longer than 7 years. Beyond that, you generally can't subpoena copies of the records, so *make sure* you especially keep copies of older records.

6. *Real estate*:

6.1.1. Any separate property used to contribute to the purchase of a community home or business or vacation property is returned to the party that it came from minus interest or appreciation.

6.1.2. Any increase in equity of the home is split 50-50, unless separate property was used to make the payments. This is known as a 2640 division. This makes it extremely unfair and prejudicial for the spouse who contributes separate property to the downpayment on a community residence, because they get no appreciation or interest on their separate property contributions to the acquisition of community property. *We therefore do not recommend using separate property as a downpayment on a community residence under any circumstances.*

6.1.3. Appreciation on the home is split 50-50 unless there is a written agreement to the contrary, or unless the property was in the name of only one spouse at the time of marriage.

6.1.4. If the home was in the name of only one spouse either at the time of marriage or at the time it was purchased, then the spouse whose name it was in gets a pro-rata share of the appreciation on the property but not the principle that was paid off. This is known as the Moore-Marsden rule.

7. *Retirement*:

7.1. Long-term marriages: If the parties are married ten years or more, each spouse gets a permanent entitlement to a portion of the other spouse's retirement. They are entitled to half of the benefits accrued indefinitely.

7.2. Short term marriages: Divorcing spouses are entitled to half of the benefits accrued during the period of the marriage for short marriages of less than ten years.

7.3. The portion of the other party's retirement that a divorcing spouse gets is based on the Brown formula, where the percentage of the total time that that payments were made to the retirement account during which the spouses were married determines the award.

8. Child custody, support, and visitation.

8.1. Child custody will be determined based on the best interests of the child.

8.2. Most awards go to Mom as the primary custodian, with Dad only having visitation for usually between 5 and 33% of the time, even if he wants a 50-50 arrangement.

8.3. The only time you usually see a 50-50 award of custody is when both parties agree to it during litigation or as part of a prenuptial agreement they signed before they married. If they fight over custody, then 50-50 awards almost never happen because judges think that warring parents can't be good parents.

8.4. Child support is computed based on state guidelines. These guidelines are based on a percentage of total income of both parties and the percent time that the non-custodial parent has the child.

8.4.1. If both parties have exactly the same income and a 50-50 timeshare, then the support will be zero.

8.4.2. Even if the timeshare is 50-50, child support is still usually paid by the father to the mother because the father usually has a higher income than the mother.

8.5. Because child support is based mainly on income and timeshare, then there is a strong incentive for mom to make false allegations about dad's parenting skills in order to increase her timeshare and therefore her support amount. This happens very often as a way for mom to turn junior into a cash register and dad into a financial slave who has been robbed of his kids. For such cases, polygraph tests are not admittable as evidence in the State of California by default, and so there is a big uphill legal battle for the father to get his credibility back and spend time with his children. Most of the time, it costs between $20,000 and $30,000 for dad

to get his kids back in such cases if he is not at fault. The only way for dad to counteract this possibility is to stipulate BEFORE the parties marry that they agree to admit polygraph tests into evidence insofar as child abuse or neglect allegations are involved.

8.6. Late child support payments compound at 10% simple interest.

8.7. There is nothing keeping a parent from moving out of state, and a parent who will lose time with their child because of a move-away.

8.8. If there is strong evidence for parental alienation, then courts have been known to frequently switch custody over to the parent who is the target of the alienation as a way to sanction the parent effecting the alienation.

9. *Legal fees and sanctions*:

9.1. Even when the attorney for a spouse is being "obstreperous" and unnecessarily difficult, he is not personally or financially liable for such unscrupulous actions. Instead, any award of sanctions or attorney fees for such tactics is awarded against the spouse they are representing and not them.

9.2. Judges will routinely sanction pro per litigants with legal fees for the side that has legal counsel if they make more work for the opposing side, but not vice versa.

9.3. Cost is $225/hr on average.

9.4. Judges will routinely have the party who makes less money pay the legal fees of the party who makes more money, and this is especially true if a party has no income.

9.5. Pro per litigants most of the time can't bill or sanction the opposing side for their time and costs of litigating, even in cases where there is clear fault on the part of the party who has legal representation. This creates a highly discriminatory environment for pro per litigants that favors the party who has an attorney.

10. Fiduciary duty

10.1. Married spouses are treated essentially as business partners who have an obligation to deal honestly, fairly, and respectfully with each other, even if they are separated. This duty is known as fiduciary duty.

10.2. Fiduciary duty carries with it the following requirements:

10.2.1. Spouses may not gift community assets to third parties without the explicit written consent of one's spouse.

10.2.2. Spouses may not sell community assets to third parties for less than their fair market value without the explicit written consent of one's spouse.

10.2.3. Spouses are obligated to give a fair and reasonable accounting and answer questions on how they managed the community's assets. This does not include the legal requirement to keep records.

10.3. Dishonest spouses (called predators or gold diggers) will typically do the following activities in violation of their fiduciary duties in order to keep their assets or income from being split if they are anticipating a divorce. All of these tactics can be proven with a polygraph test for the vast majority of cases. It is also prudent and very important to have a prenuptial agreement at the time of marriage as shown in section 9.9 of this document that prevents most of these tactics. This will reduce the risk that these tactics will be used by someone you might be marrying:

10.3.1. Gift separate property assets to their relatives at the time of marriage or during the marriage.

10.3.2. Sign a quitclaim deed at the time of marriage for jointly owned property they share with other brothers, sisters, or parents.

10.3.3. Gift assets to relatives at the time of separation to keep the court from considering it, which is sanctionable by a 100% penalty if this act can be proven without a reasonable doubt.

10.3.4. Sell community assets at less than fair market value to third parties, who will hold the assets until after the divorce.

10.3.5. Not document any of their transactions or conduct them in cash, so they are not traceable.

10.3.6. Get their paychecks by check instead of direct deposit so they can gift the assets in cash to their relatives for safekeeping.

10.3.7. File separate income tax returns.

10.3.8. Do not allow their spouse to get copies of business records, including pay statements, income tax returns, and account statements.

10.3.9. Refuse requests by a spouse to get copies of the business records to facilitate a fairer property division.

10.3.10. Lie about their assets on their Income and Expense declaration submitted to the court.

10.3.11. Say they lost their statements, even though they have copies. This is perjury and is also punishable if proven.

10.3.12. Destroy the evidence and financial records of their spouse so that spouse cannot prove the separate property interest that he has during the divorce proceeding.

11. <u>False allegations and perjury</u>

11.1. It is very common on California for divorcing spouses to make false allegations about their partner about domestic violence, child abuse or neglect, or spousal abuse. There are many reasons for this, including:

11.1.1. False allegations of spousal abuse allow a divorcing spouse to get a restraining order so they can legally evict their husband or wife from the home, eliminating the need for them to compromise or communicate in trying to reconcile the marriage.

11.1.2. False allegations of child abuse or neglect often have the affect of alienating the other parent from their child and giving a spouse an advantage in the child custody dispute. This gives a spouse a higher timeshare, which then guarantees them higher child support every month.

11.2. Another common tactic is for spouses to hide assets during the separation so that these assets don't need to be divided and they can be hoarded. They will then falsify what is called their Declaration of Disclosure (DOD) so as to conceal the existence of these assets. It is very difficult to prove that fraud was involved without a polygraph test, but if it can be proven, the penalties can be substantial. As a matter of fact, the state allows that ALL of the assets that were hidden are given to the spouse that was lied to!

11.3. It is very difficult to determine if a person is lying or propagating false or discrediting allegations of domestic violence, child abuse, or child neglect. The main reason for this is that in California, the California Evidence Code §351:

11.3.1. Does not allow polygraph tests to be admitted into evidence without consent of both parties. Rarely will both parties consent to this, especially if one of them is making false allegations to gain a strategic advantage in the divorce case.

11.3.2. Does not require divorcing parties to submit to a polygraph test.

11.4. Because polygraph tests are not admissible as evidence in California, then what usually happens when there are disputes over false allegations in a custody dispute is that judges will order the following:

11.4.1. They will first order the accused parent to undergo supervised visitation so that his or her parenting style can be monitored by an objective third party. Reports are completed

on this person that become evidence for the judge. The supervised visits go on for the length of the psychological evaluation, which can last as long as 11 months! What a waste.

11.4.2. Next, they will order a very long, expensive psychological evaluations. For a custody evaluation, this can cost $5,000-$6,000. Polygraph tests only cost $300! Therefore, the psychologists now get rich because one of the spouses are lying. He will also take his time completing the custody evaluation in order to run up costs. Most custody evaluations take from 6 to 11 months.

11.4.3. Finally, they will appoint or order a new lawyer, called the Minor Counsel, who will represent the minor child because neither of the parents can be trusted to have the child's best interests in mind. This third person is very expensive ($250/hr) and now shows up at every court hearing. His cost is split 50-50 between the father and mother. This means that when the respondent's counsel, the petitioner's counsel, and the minor counsel show up to court, it costs a total of $750/hour! This very quickly depletes the community of any assets and destroys any possibility of a decent standard of living for either parent or the child after the divorce is finalized. Instead, the parents finish their divorce with a mountain of legal debts, high child support bills, and a dramatically lower standard of living.

11.5. The affect on the child of having to go to supervised visits just to see a parent is that the child has less trust for that parent, even if the mistrust isn't warranted, which further gives the falsely accusing parent a strategic advantage.

11.6. The only realistic way to prevent all this expensive and oppressive nonsense is to stipulate to the following on a pre-nuptial agreement signed by both parties:

11.6.1. The parties agree to take a polygraph test whenever certain types of allegations are involved.

11.6.2. The parties agree or stipulate to admit this evidence voluntarily into the court without further foundation. This means that you don't need testimony to get the evidence admitted.

Does this default prenuptial agreement for California scare you? It should! I hope it causes people to think *much* more carefully about getting married, and about the person they choose as their spouse! We're not trying to discourage marriage, because we really believe in it. Perhaps doing this would lower the divorce rate and create a more stable environment for the next generation of children to grow up in, which would further lower the divorce rate later for the next generation.

9.8 Questions And Answers for Prospective Spouses Who Can't Accept Having to Sign a Pre-Nuptial Agreement

Below are a few common remarks and questions we hear from people when asked about their feelings on divorce and pre-nuptial agreements. It turns out that women are the ones most likely to object to prenuptial agreements, perhaps at least in part to the many statements made in section 4.15 (Humorous Side of Marriage), and in particular 4.15.10. We follow each question with a canned answer to such remarks to help you understand a well researched perspective on these issues:

9.8.1 Doesn't post-divorce spousal support make marriage into the equivalent of prostitution?

Question 1: If people get divorced without a pre-nuptial agreement and leave settlement up to the court in California, then spousal support is very commonly awarded for a period not to exceed half the length of the marriage. Doesn't payment of spousal support under those circumstances in essence make marriage into a legalized form of prostitution, where the sex comes *during* marriage and the payment comes *after* marriage?

Answer 1: Good question! We can't argue with that logic at all! This question simply helps to reinforce the idea that we should get married out of *choice* and not out of *need* or desperation. People will always be happiest in marriages where they can be *interdependent* rather than *dependent*. We talk a lot about this in section 3.1.3 of this document, when we addressed the three stages of personal growth, and in sections 3.8.2.1 (Inequality versus Equality), 3.8.2.2 (Manipulation versus mutuality), 3.8.2.4 (Control versus intimacy), and 3.8.3, page 3-51 (Emotional Dependence). In that context, marriage is a team and a partnership that requires the highest level of maturity and interdependent thinking in order to be a happy and satisfying experience for the spouses. Anything other than interdependent "team" thinking makes marriage into a parasitic relationship where one person (usually the man) becomes an involuntary supporter (or host, in biological terms) for the other spouse with the blessing and sanction of the state legal apparatus, no matter whether they are married or not! We believe this produces a condition of slavery rather than partnership, and encourages a type of dependence by the woman that will incentivize women to make all kinds of false claims and allegations about the spouse they are divorcing in order to extort money out of them. Read section 9.7 to find out about all the legal chicanery that goes on in the name of not taking personal responsibility for oneself as part of a divorce. We think pre-nuptial agreements prevent this problem and force prospective spouses to take personal and complete responsibility for supporting themselves, regardless of their matrimonial state. How can this be a bad thing? It will also give them much more dignity and autonomy because it keeps the state and the courts out of their relationships.

9.8.2 Don't the legal aspects of marriage amount to legislating morality?

Question 2: Doesn't the legal aspect of the marriage contract promote fear and force people to stay married for fear of what would happen legally if they got divorced? Shouldn't marriages be based on love and the spiritual covenant we make before God instead of fear of reprisal by the state? Why should our marriage have to rely on law to in effect "legislate the morality of staying married"?

Answer 2: Another very good question. We believe that the state has no business legislating morality, because it just doesn't work. Marriage as an institution is primarily a spiritual union, as we pointed out in section 9.1. That is how God intended it. The main reason it needs to have a legal aspect is for the benefit and protection of the children, who are the future of our civilization and our future leaders and businessmen and women. We believe ensuring a prosperous and healthy future for our civilization and our children is a worthy goal of the state.

However, relationships without a strong spiritual foundation and common faith and which rely exclusively on fear of the legal and financial consequences of divorce will never be

adequate to make marriage a happy institution. The fruit of the Holy Spirit, love, joy, unselfishness, and common spiritual and religious faith, are the only things that will ever be an adequate foundation for a happy marriage and family. If these elements aren't mutually shared because one spouse is a Christian and the other isn't (unequally yoked) or the spouses have a common faith but not a common degree of commitment to that faith, then the marriage will most certainly be unhappy. Holding that kind of marriage together won't help anyone, and it will likely do more harm than good to the children if the spouses are always angry and arguing, constantly bitter and unhappy, chemically addicted because they want to escape, or committing adultery because their spouse doesn't meet their sexual needs. We believe that the state should not be punishing *either* one of the spouses financially who leave this type of relationship by getting divorced. The pre-nuptial agreement in section 9.9 protects both spouses from being harmed financially for getting divorced, and therefore doesn't force people to stay in a relationship that will be bad for their children and for their own emotional health. We agree that if they are both Christians, they have an obligation to work things out, and they can and should allow the Holy Spirit to operate in their lives to make the marriage and family work, but no amount of legislation or in effect legal threats on the part of the state can or should force them do this.

9.8.3 Do pre-nups make divorce easier to get?

Question 3: Do pre-nuptial agreements make divorce easier to get?

Answer 3: We would argue that they don't, and that actually, the state marriage license (pre-nuptial agreement) makes divorce easier to get than this pre-nuptial agreement. Here are some very good reasons why:

1. The state's legal apparatus rewards women financially who want to get divorced with monthly child support and spousal support. If women know they can escape their commitments and responsibilities and not have to work, in effect becoming a financial parasite to their X-husband's income with spousal support for half the length of the marriage, then they are encouraged to get divorced. However, with the prenuptial agreement in section 9.9 of this constitution, there is no financial incentive for women to get divorced because:
   1.1. Not allowed to award spousal support and child support assumes a 50% timeshare, which is far more equitable.
   1.2. Retirements are separate property.
2. Most states now have "no-fault" divorce laws. This means that in most cases, there is no incentive to talk about or accept responsibility for the behaviors and attitudes that caused the divorce or to seek counseling to reconcile it. The only justification you need in most states is "irreconcilable differences", which just makes it easy to get divorced. All this has the effect of encouraging divorce.
3. One of the biggest causes of divorce is violated expectations. People divorce because their new spouse doesn't behave the way they expect and they are selfish enough to get divorced and risk destroying the relationship because their spouse won't change to meet their expectations. Most people go into marriage without taking the time to understand

or explain to their prospective spouse these expectations or requirements for how they want their new spouse to behave. For instance, very few people seek pre-marital counseling BEFORE they marry in order to understand each other better. An excellent book that accomplishes this that we highly recommend is *Before You Say I Do*, by H. Norman Wright and Wes Roberts, Harves House Publishers, 1997, ISBN 1-56507-637-0. Instead, most people let hormones control their choices and often rush into marriage and end up unhappy because they didn't take the time to get to know the person they were marrying. This document and the pre-nuptial agreement in section 9.9, on the other hand, defines quite exhaustively what the shared expectations of both prospective spouses are. It establishes a detailed spiritual foundation for the family that is based on trust, shared goals, mutual agreement, respect, and personal responsibility. This, we believe, will have the effect of ensuring MUCH more meaningful commitment between the spouses when they finally do get married. We believe that if all couples took the time to document their shared expectations like we have here, then the divorce rate would be MUCH lower than the 55% it is now.

9.8.4 Are pre-nups based on mistrust?

Question 4: Aren't pre-nuptial agreements founded on the concept of mistrust? Should they be avoided because of this?

Answer 4: Pre-nuptial agreements are no more founded on the idea of mistrust than the state's default prenuptial agreement. If people could be trusted to fully honor their commitments and behave honorably all the time, we wouldn't need all 1,311 sections of the California Family Code and a vast judicial and legal apparatus of the secular state to enforce these laws. Why is it OK for a godless secular state to write the marriage contract but not the parties who are marrying? Below are a few possible (guess?) reasons why couples would not want to jointly define the legal aspects of the marriage contract for themselves and instead would want to leave their future entirely up to the state:

1. Prospective spouses don't want to scare away their partners.
2. Prospective spouses don't want to create anxiety in their partner by getting lawyers involved before they get married. They don't want to reveal their hidden agenda and thereby undermine trust.
3. The woman benefits too much financially from the state's default pre-nuptial agreement and doesn't want the male to realize what he is agreeing to until after he in effect "signs" the contract by getting married.
4. They aren't happy with their spouse but think they can change them later with the hammer that the state's legal apparatus gives them to coerce their spouse (very bad reasoning). We think that you should never marry anyone expecting that you can change anything about them after you get married. Loving them demands that we be completely honest and open about our feelings and expectations with them *before* we marry them.
5. The women has great anxiety over her husband leaving her for another woman when she is older and less attractive. She is in effect deathly afraid of being abandoned and

left to raise the kids later in life by an unscrupulous husband. The state's default pre-nuptial agreement is her vehicle to punish him for doing this if it ever happens by taking between 50% and 90% of his assets and income both during and after the marriage. This will FORCE him to stay faithful and committed. We would question why a woman would want to marry a man she felt this way about in the first place.

9.8.5 Why get married at all if you are going to have a pre-nuptial agreement?

Question 5: Why get married at all if you are going to have a pre-nuptial agreement? Don't prenuptial agreements make marriage no different than dating from a legal perspective?

Answer 5: The fact of the matter is, as we pointed out in section 9.7, that if you get a marriage license from the state, you will have a prenuptial agreement whether you want one or not. The real question to ask is not whether you want one, but who you would rather have write it: 1. The morally bankrupt legislators of the secular state who can change it at any time, including after you get married or ;2. The both of you through mutual agreement, where it isn't subject to change. Once we accept this premise that we will have one whether we want one or not, then its just a question of what needs to be in it. Even if we let the state write the agreement, there is a lot of variation among states in what goes into the contract. For instance, in Texas, there is no spousal support but in California, there is. Similarly, some states are community property states while others aren't. Why not have a pre-nuptial agreement the two of you define that doesn't change based on the state you live in?

Another worthy question to ask is: Why shouldn't dating be more like marriage? People put on their best face during the courtship process because they regard it as a marketing exercise. If they knew they can't use the state's legal apparatus to intimidate and coerce their mate into compliance after they get married, then they will have to continue to behave every bit as respectfully and courteously during the marriage as they did during the courtship. What's wrong with that? This will encourage them to show their true colors during the courtship process, because as Abraham Lincoln says: "You can fool all of the people some of the time, and some of the people all of the time, but you can't fool all of the people all of the time."

9.8.6 So how do I keep my husband faithful if I don't have a big legal stick to beat him ruthlessly with when he misbehaves?

Question 6: So how do I keep my husband faithful if I don't have a big legal stick to beat him ruthlessly with when he misbehaves?

Answer 6: This question is related to item 5 of the answer to question 4. This question is similar to Theodore Roosevelt's saying: "Speak softly, but carry a big stick." It is based on mistrust and anxiety by the woman of the man in the marriage. This question arises out of what

women say they worry most about in relationships: That the man they marry will leave them for another woman. We would argue that women do the same thing to their men, and that men need equal protection. This pervasive anxiety of women is often so severe that it becomes a self-fulfilling prophecy by virtue of the fear and insecurity it creates in the man. It also is based on the fact that the man should be expected to assume all financial risks of getting married. This attitude assumes the woman needs the upper hand at all times to manipulate and control the man to keep him compliant to her wishes. It undermines the value of trust, respect, dignity, communication, cooperation, and partnership within the relationship and replaces them all with a big stick. The woman who asks this question is assuming that her man is selfish and dishonorable and will do anything he can to get sex from women and be married to an attractive woman at all times, including hurt people (abandon them), lie (break his marriage vow), and be irresponsible (not pay child support) to meet his sexual needs. The default state pre-nuptial agreement is written with this assumption in mind and hands the woman a big financial and legal hammer to keep the guy in line to prevent this problem (see section 4.15.6 for the humorous side of this very situation). However, this is like legislating morality and is based on mistrust. If the woman really does mistrust her man this much, we would argue that the couple has no business getting married in the first place! Once again, we would argue, as we did in question 1 above that marriage will be unhappy unless it is an EQUAL partnership in every respect. This means that one party doesn't have an advantage over the other, either in courtroom or in the bedroom. Without equality under the law for both sexes who marry, then marriage just becomes a vehicle for women to economically equalize the score with men, where they have a financial incentive to marry a man long enough to empty out his bank accounts and saddle him with spousal support and child support, and then leave him. We call such women black widows. What are your thoughts on this subject?

9.8.7 Do pre-nuptial agreements put too much of the focus of the relationship on selfishness and materialism?

Question 7: Do pre-nuptial agreements put too much of the focus of the relationship on selfishness and/or materialism?

Answer 7: Jesus makes it pretty clear that we should not concern ourselves with or worry about tomorrow or what we own or will eat in Luke 12:22-34. He instead says in Luke 12:29-31: "*And do not seek what you should eat or what you should drink, nor have an anxious mind. … But seek the kingdom of God, and all these things shall be added to you*." This simply emphasizes the importance of faith and common spiritual goals over the materialistic aspects of the marriage commitment. Furthermore, prenuptial agreements or the law can never hope to enforce these priorities in our hearts because they are spiritual and not legal conditions. Instead, we would argue that the only thing the state's default pre-nuptial agreement identified in section 9.9 does is to create anxiety in both parties over how they will be able to support each other and hold the relationship together, which Jesus said above that we shouldn't have. We believe, instead, that a pre-nuptial agreement between the parties entirely removes the possibility that marriage is being undertaken for financial or materialistic reasons, and ensures a full and frank disclosure of intents and motives for

getting married, which we believe ensures:

1. Purity of intent and motives for both parties entering into marriage.
2. Proper spiritual focus going into the relationship.
3. Honesty and truthfulness about our needs and expectations.
4. The absence of anxiety or duress for both parties.
5. The absence of any hidden agendas.
6. The absence of materialism or covetousness by either party.
7. The presence of love. Why else would two people get married if they got absolutely nothing else out of the marriage but the love of their partner?
8. That we have to rely on our own abilities and effort and our own faith in God rather than our future spouses' income as the source for our security and emotional well-being, which is precisely what Jesus said we should be doing in Luke 12:22-34.

We would argue that when we use pre-nuptial agreements to remove all the materialistic and wealth-transfer (theft?) aspects associated with the legal definition of marriage, then we are left exclusively and only with marriage as what the Bible says it really is: *a spiritual union before God our Father which is acknowledged and recorded legally by the state*. Why shouldn't this definition of marriage be enough to satisfy especially us Christians? Any attempt to legally reintroduce the materialistic aspects of the marriage commitment by forcing someone to accept the state's default prenuptial agreement simply transforms marriage into a form of prostitution, where we are legally coerced by the state and our future spouse into giving money in order to get sex, which is against the law in most states (see section 9.8.1). We may not often call it prostitution, but that is what is has become in many cases because of how marriage has been used as a device for economic equalization by unscrupulous men and women.

Why has our society allowed the legal aspects of marriage to evolve into a wealth-transfer exercise where women rape men financially upon divorce? Here are a few possible reasons we would like to suggest:

1. The traditional family model within America had mom at home raising the kids and dad out working to support the family. In that scenario, it makes sense that mom should share the wealth with dad and receive child support, but only when both parents agree on that scenario and mom didn't force dad to let her not work. However, that model no longer applies because the vast majority of women now work (70% or more). Nevertheless, women still have the unreasonable traditional view of the family so they in effect get the best of both worlds at the expense of men: 1. The economic freedom of working and supporting themselves (which 70% or more of them do), but 2. The advantages of a matriarchal attitude by the courts that requires the man to support them. Things are changing in this area, but they aren't changing fast enough in the courts or in the minds of women. We would argue that you can't have your cake and eat it too and that women need to be more realistic about what they expect from men in this department.
2. Couples who are marrying off their daughters don't want them to come back home to stay or ever be economically dependent on them again.
3. Women like the idea of using marriage as a means to equalize the sexes economically without the need for much additional effort. After all, it is true that the average woman

makes less than the average man.

Even considering these factors, however, are we (and especially women) really being honest with our future spouse and ourselves if we avoid talking about and reaching agreement on these critical issues *before* we get married? Aren't marriages supposed to be based on trust, which can only exist with complete honesty, truthfulness, and full disclosure, and what better disclosure of the issues could there be than something like this family constitution?

Doesn't it make more sense to eliminate the possibility that the courts or expensive lawyers will ever be involved with or control our lives? Why shouldn't all the extreme anxiety of legal involvement and the threat of wage garnishment be eliminated as a reason for staying married? Is fear of punishment from the legal system the reason for getting and staying married, or is it love? In our mind, fear has no place as a basis for an enduring relationship. What is your opinion on this subject?

9.8.8 Do pre-nuptial agreements have risk reduction advantages for both spouses over the state's default pre-nuptial agreement?

Question 8: Do pre-nuptial agreements have financial advantages for both spouses over the state's default pre-nuptial agreement.

Answer 8: The prenuptial agreement below actually has *significant* financial and risk-avoidance advantages for *both* spouses over the state's default agreement for spouses who really and genuinely love and trust each other. Let's list a few of them:

1. If either spouse is in trouble with the IRS, he or she can transfer all of his or her separate property assets to the other spouse temporarily and thereby render themselves judgment-proof if they get dragged into court for back taxes or tax evasion. A trust, on the other hand, would not protect spouses in this way.
2. If a spouse has to declare bankruptcy, he or she can transfer all of his or her separate property assets to the other spouse temporarily and thereby render themselves judgment proof against creditors or collection agencies. A trust, on the other hand, would not protect spouses in this way.
3. When parties seeking to collect monies from a spouse are searching for assets that have been transferred to the other spouse, then the other spouse's assets won't show up because that spouse has a different social security number.

9.8.9 Doesn't the State's Default Prenuptial Agreement Encourage Domestic Violence or Spousal Abuse?

Question 9: Doesn't the state's prenuptial agreement encourage domestic violence or spousal abuse? Can't we reduce the possibility of domestic violence with our own prenuptial agreement?

Answer 9: Very good question. We would argue that the state's default pre-nuptial agreement appearing in section 9.7 above actually does more to encourage domestic violence and spousal abuse than the one proposed and defined below between the spouses. This is because:

1. The structure of family law in the state often rewards and encourages spouses to make false allegations of abuse against the other spouse in order to advantage themselves in the custody battle and property award by using lies to denigrate the character of the other spouse. Courts often feel sympathy for spouses who have been battered and will try to compensate them unfairly. However, this kind of sympathy, if it is based on false allegations, simply prejudices the rights of the other spouse and creates more anger and resentment, which increases litigation and the chance of domestic violence. The prenuptial agreement below prevents false allegations of domestic violence with polygraph tests and eliminates kick-out orders. This eliminates the possibility of anger and resentment on the part of a falsely accused spouse that can lead to domestic violence.
2. When spouses divorce or are in conflict, the property and custody issues need to be litigated and often can't be settled through mutual agreement. The focus on the possibility of litigation caused by conflict increases fear and the uncertainty of the situation, which can cause spouses to reach a fear and hysteria state that makes them more likely to commit acts of violence and emotional abuse against the other spouse. The prenuptial agreement below minimizes the possibility of litigation by specifying all rules and conditions up front and actually punishes litigation by forcing the spouse who initiates litigation to contradict the prenuptial agreement to pay all the legal fees. This lowers the fear and anxiety level of both spouses because they feel less anxiety about having to litigate if they get married.
3. The stakes are higher with the state's default prenuptial agreement. For instance, the default prenuptial agreement awards spousal support, exorbitant child support, and (unjustly) divides the appreciation on separate property owned prior to marriage in half. This usually does more to unfairly prejudice the financial rights of the man in the marriage than the woman. Is it any surprise then that men are more likely to be violent when they learn that divorce is a possibility? They have more to risk financially, usually and would be hurt more financially by a divorce. The prenuptial agreement below solves this problem by eliminating such financial inequities. It eliminates spousal support, forces a 50-50 child sharing, and keeps appreciation on separate property during the marriage as separate property, thereby discouraging use of marriage as an economic equalizer by either spouse.

Therefore, we believe that the prenuptial agreement below actually does more to *prevent* domestic violence and spousal abuse than the state's default prenuptial agreement because it minimizes the possibility of false allegations, unnecessary litigation, and unjust court prejudices based on those false allegations that can lead to the kind of anger and resentment that can ultimately cause domestic violence and spousal abuse.

9.8.10 What should I tell my fiance about why I feel the need for a pre-nuptial agreement?

Question 10: What should I tell my fiance about why I feel the need for a pre-nuptial agreement?

Answer 10: Tell her (it's usually the woman who objects to pre-nuptial agreements because the courts give her the biggest financial advantage in most divorce proceedings):

1. You don't ever want the courts or lawyers involved in your relationship under any circumstances. Ask her how she can guarantee this without a pre-nuptial agreement?
2. Ask her how she intends to remove all the risks associated with the default pre-nuptial agreement appearing in section 9.7 earlier.
3. Ask her about other divorces she has witnessed and ask her whether she thought the result was good for the man or was equal and fair.
4. Ask her why she doesn't want to discuss or agree to the terms of the marriage and document all the expectations involved so that you can make sure you know what they are and are prepared to do your best to meet them.
5. Tell her you want to avoid all the anxiety, great expense, and uncertainty of legal involvement. Divorce is already traumatic enough without getting lawyers and judges involved. If she doesn't want to sign the pre-nuptial agreement, then have her sign a statement that she will pay all legal fees on both sides that result from a divorce if she initiates it or abandons the home or refuses to submit sexually to force her spouse to initiate it.
6. Say that you don't want the reason why we stay married to involve the fear of punishment or financial loss by the courts. Emphasize that unconditional love and religious faith are the only legitimate reasons to get or stay married.
7. Tell her that she is not a source of mistrust or anxiety and that she is the best thing that ever happened to you, but that the source of anxiety you have has more to do with family law and how it is practiced in the state than it does with her.
8. Read chapter 7 of this document in its entirely with her. Ask her for her comments and response.
9. Tell her that your previous experiences with the legal system (if you were divorced once already) were very unpleasant and left you feeling victimized and that you want to avoid any future possibility of repeating this experience again.
10. Point out that a very common tactic by unscrupulous women is the bait and switch approach. In this approach, a man thinks he has reached an agreement because the woman says she agrees or will comply, but she does so as a concession because she doesn't want to look disagreeable or reveal her true character. At the time she agrees or concedes to the man, she deliberately hopes he will forget the agreement and she can then change her mind at a much later time. This kind of deceit mirrors that described in the book of Genesis in the Bible, where Eve was the first person to deceive Adam and deceit was the original sin of man. Many women operate this way as a devious way to get their financial or emotional needs met and they are loathe to write down anything they agree to because it undermines their ability to manipulate the situation later by "conveniently changing their mind" and dishonoring their commitment in the process. The man's response to this approach should be: "*If you can't get it in writing, you probably won't get it!*"

9.8.11 Wouldn't I be the laughing stock of all my family or friends or coworkers if I signed a prenuptial agreement?

Question 11: Wouldn't I be the laughing stock of all my family or friends or coworkers if I signed a prenuptial agreement? Wouldn't it make me look bad for people to know that I did something like this?

Answer 11: First, we would argue that you will never get into the position of having to be a laughing stock because this agreement prevents anyone other than a judge, a witness, the attorneys for the parties and the two parties from ever viewing it or knowing what is in it.

Second, we would argue that with such a high divorce rate and a litigious society in which we live, prenuptial agreements have become very common. Therefore, there is little need for concern about having one.

Thirdly, we would question the motives of the person who made this statement because the Bible says in Prov. 16:18: "Pride goeth before destruction, and a haughty spirit before a fall." The Apostle Paul also said in Phil. 2:3: "Do nothing from selfishness or conceit but in humility count others better than yourselves." We would argue that a person who would say this is prideful and is infected by the cares of the world and overly concerned about the opinions of others and the praise of men as we described in section 7.3.9: Pride. This kind of selfishness and pride (which was Satan's sin and the cause of his rebellion) would not be healthful within a relationship. If this agreement would dissuade a person with such an attitude from getting married, then it is doing its job, because people like this have no business being married to begin with.

Fourthly, instead of expecting (worldly) people to like us or accept us for the Godly choices we make, we ought to expect that they will hate us and reject us because of our spiritual beliefs and our faith and the obedience to the Lord that we demonstrate through that faith, as Jesus pointed out: "*Blessed are you when men hate you, when they exclude you and insult you and reject your name as evil, because of the Son of Man. Rejoice in that day and leap for joy! For indeed your reward is great in heaven. For in like manner their fathers did to the prophets.*" (Luke 6:22-23). We also find the same kind of admonition in James 4:3-4 "*You ask and do not receive, because you ask amiss, that you may spend it on your pleasures. Adulterers and adulteresses! Do you not know that friendship with the world is enmity with God? Whoever therefore wants to be friend of the world makes himself an enemy with God.*"

9.8.12 Is it true that most family law attorneys don't like pre-nuptial agreements and advise against them simply because they eliminate the need to litigate and thereby decrease profits?

Question 12: Is it true that most family law attorneys don't like pre-nuptial agreements and advise against them no matter how advantageous they might be to their client? Would they do this simply because such agreements eliminate most of the need to litigate. Isn't litigation the most important and regular source of revenue for divorce attorneys and don't they make most of their money by keeping couples arguing rather than settling? (Incidentally, a decrease of litigation is viewed by family law courts as beneficial to the children because

they decrease financial and emotional stress on the parents and the children.)

Answer 12: Asking a family law attorney whether he/she thinks you should have a prenuptial agreement is like asking a barber if you *don't* need a haircut! Of course he/she will say no because he wants your continuing business and wants as many reasons as possible to go back to the courtroom! Lawyers make money by litigating, not settling, and the more a couple decides and agrees on before marriage *in writing*, the less need there will ever be to litigate later on when the couples have disagreements or communication problems. That's the foundation of why we have so many laws on the books governing marriages in California: to minimize the need for litigation.

Family law attorneys make between $150-$250/hour in California and they aren't about to admit that they want to give you as many reasons as possible to need them, nor would they be likely to admit that they would advise against an equitable prenuptial agreement simply because it would eliminate the need for their services! However, if you ever ask them for their advice on the prenuptial agreement proposed below in section 9.9, then you should ensure that you completely understand their reasoning and all the technical and legal aspects of it. Caveat emptor! Be forewarned that they may use their technical knowledge of the law to nix an agreement as a smokescreen of obfuscating legalese in order to hide their ***real*** reasons for disapproval, which are that it would decrease their business and their lucrative profits!

9.8.13 Aren't prenuptial agreements supposed to give me MORE freedom and autonomy and not less? It doesn't seem like this one does.

Question 13: Aren't prenuptial agreements supposed to give me more freedom and autonomy and not less? It doesn't seem like this one does. I instead feel like I'm being put in a straight jacket and that much more, not less, is being expected of me as a consequence of the relationship and the marriage than if we did noting and just relied on the state's default prenuptial agreement.

Answer 13: The purpose of any prenuptial agreement should be to give both parties *more* freedom and *more* autonomy and to make them feel *more* empowered than they would otherwise be if they relied entirely and only on the provisions of the state's default prenuptial agreement. It should make them feel more responsible for themselves and less reliant on the help of others, not more. That is the only way to maintain the dignity within the relationship to make it an enduring one. They should feel no more restricted or controlled within marriage than they did when they were dating, at least as far as the state is concerned. This will prevent the unwanted intrusion of the state into their otherwise very personal and God-given marriage and will maintain "separation of church and state". The prenuptial agreement proposed should ensure a separation of legal matters from spiritual matters and should not allow the atheistic beliefs of the state to interfere with the responsibilities the spouses feel toward God with respect to the marriage. Refer to section 9.3 for details on why separation of church and state in a marriage is important and why Christians should not obtain a state marriage license but should instead sign a prenuptial agreement based on Godly principles, even if not all the provisions of the agreement are enforceable in a court of law.

Some people might ask: "*Why does the proposed prenuptial agreement need to have so many provisions?*" The answer is that if we are going to undo most of the provisions of the STATE's default pre-nuptial agreement, which has evolved steadily over the past two hundred years of legal wrangling and legislation, then we have a lot of territory to cover and a lot of things to specify in order to nullify the effect of each of the unjust terms in the state's default agreement. If the law resulting from all 1300 sections of the complex California Family Code and the body of case law behind it weren't so explicit and oppressive and detailed in its effect, then there would be far fewer things to specify in a prenuptial agreement if one wished to nullify its effect.

Below is a tabular, side-by-side and detailed legal analysis that compares between the state's default prenuptial agreement mentioned in section 9.7 and the one proposed in section 9.9. This table is very useful in understanding the impact of state marriage laws. It hopefully shows clearly the itemized terms of each of the two approaches and the differences so that readers may judge for themselves whether they have more or less freedom and autonomy than they would if they relied on the state's default alone. Based on the table below, we would suggest that the proposed agreement does in fact provide more freedom, empowerment, and autonomy for the married spouses than the state's default agreement mentioned above in section 9.7:

1	***ATTORNEY FEES AND COSTS***	***Rutter California Family Practice Guide Applicable Section(s)***	***Applicable statutes and case law***	***State's default prenuptial agreement in section 9.7***	***Proposed prenuptial agreement in section 9.9***
1.1	Based on **lack of ability to pay or need**	Family 1:36-37; Family 5:183	Fam. C. §270 Fam. C. §2030, 2032	Court can determine based on need who should pay attorney fees of either side.	Parties pay their own attorney fees and avoid entirely the need to litigate
1.2	Based on **violation of ethical rules**	Family 1:75.4	Cal. Pak Delivery, Inc. v. United Parcel Service, Inc. (1997)		
1.3	For **pro-per** representation	Family 14:128.1	Fam.C. §2030/2032	Pro per litigants can request attorney fees against the other side but seldom get them.	Litigation is avoided so attorney fees are irrelevant.
1.4	Attorney fees awarded because of the **nondisclosure of significant assets**, thereby violating her fiduciary duty to responsibly manage community assets.	Family 8:617-8:617.1	Fam. C. §1101(g)	When a party tries to hide assets in violation of their fiduciary duties, then the court can award attorney fees against them to recover costs to discover and litigate the recovery of these assets.	
1.5	**Contempt motions**	Family 18:226.5	CCP §1218(a)	**Parties found in contempt** for violating a court order "may" be ordered to pay the charging party's attorney fees and costs incurred in connection with the contempt proceeding.	There would be far fewer things that would require court orders because everything would be in the agreement. This would virtually eliminate litigation and legal costs. Parties found violating the agreement would have to pay the attorney fees for the other side to obtain redress.
2	**SANCTIONS**				
2.1	**Breach of fiduciary duty**	Family 8:612 (Statutory claim for breach of fiduciary duty)	Fam. C §1101(a) (breach of fiduciary duty) CC §3294	Parties are obligated to pay to their spouse punitive award for fraud and **breach of fiduciary**	There would be far less community property and almost no real community property. The two biggest

1	*ATTORNEY FEES AND COSTS*	*Rutter California Family Practice Guide Applicable Section(s)*	*Applicable statutes and case law*	*State's default prenuptial agreement in section 9.7*	*Proposed prenuptial agreement in section 9.9*
		Family 8:619 (100% value penalty for breaches with "oppression, fraud, or malice"	(Punitive damages for fraud, oppression, malice)	duty resulting from misappropriation and nondisclosure of community assets.	sources of community property, retirement and real property, would be eliminated so that fiduciary duty issues would be virtually irrelevant.
2.2	**Post-1994 proceedings: Violation of "certificate of merit"** Cannot be awarded to moving party, only to court CCP §128.7(d).	Family 15:85-86	CCP §128.7	Requires the legal proceeding meet the following requirements in order to not be sanctioned by the court as an unmeritorious motion: 1. Claims and legal contentions therein are warranted by existing law or by nonfrivolous argument 2. Allegations and other factual contentions therein have evidentiary support or, if specifically so identified, are likely to have evidentiary support after reasonable opportunity for further investigation or discovery. 3. The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a	Same under proposed agreement.

1	*ATTORNEY FEES AND COSTS*	*Rutter California Family Practice Guide Applicable Section(s)*	*Applicable statutes and case law*	*State's default prenuptial agreement in section 9.7*	*Proposed prenuptial agreement in section 9.9*
				lack of information or belief. [CCP §128.7(b)(1)-(4).	
2.3	**Frustrating settlement**	Family 14:82;**14:230-267**	Fam. C. §271	Allows the court to sanction parties who disrupt or interfere with a prompt and fair settlement.	Same under proposed agreement.
2.3.1	Cannot be assessed against a party's attorney, only against party		Marriage of Daniels (1993) 19CA4th 1102, 1110, 23CR2d 865, 869		Same under proposed agreement.
2.3.2	Cannot impose unreasonable financial burden. It must be scaled to the payor's ability to pay.	Family 14:246	Fam.C. §271(a); Marriage of Quay (1993) 18 CA4th 961, 969		Same under proposed agreement.
2.3.3	Parties relative circumstances irrelevant to the determination of whether to make an award.	Family 14:248	Fam.C. §271(a)		Same under proposed agreement.
2.3.4	Requires evidence of conduct that frustrated settlement	Family 14:250.1	Marriage of Schulze (1997) 60CA4th 519, 531		Same under proposed agreement.
2.4	**False allegations of child abuse or neglect**	Family 7:318	Fam. C. §3027	Allows court to sanction parties who make false allegations of child abuse or neglect against the other party. Does not allow or provide for polygraph tests.	Admits polygraph tests into evidence and requires photographs and recordings to authenticate. This prevents abuses. Also removes the incentive to want to make false allegations by ensuring a 50-50 timeshare no matter what.
2.4.1	**Failure to unsuccessfully make or oppose a motion for a protective order**	Civil Procedure 8:717.1	CCP 2025(n), 2025(I)	Allows courts to impose sanctions against a party for failure to make or oppose a motion for	Prevents protective orders so that reproach and correction may occur. Therefore prevents this

1	*ATTORNEY FEES AND COSTS*	*Rutter California Family Practice Guide Applicable Section(s)*	*Applicable statutes and case law*	*State's default prenuptial agreement in section 9.7*	*Proposed prenuptial agreement in section 9.9*
				protective order.	type of sanction against either party.
2.4.2	**Failure to respond to an inspection demand** after a motion to compel	Civil Procedure 8:864.1; 8:1205	CCP 2031(k); 2023(b)(2)-(4)	Allows courts to sanction parties who fail to respond to an inspection demand after a motion to compel has been granted.	Requires parties to provide copies of all records to each other in fulfillment of their fiduciary duty. Sanctions would be same under proposed agreement.
2.4.3	**Property disclosure declaration non-compliance**: Failure to provide or failure to provide all necessary information	Family 1:491	Fam.C. §2107(b) & (c)	Allows courts to sanction parties who don't meet disclosure requirements by revealing all their assets.	Same under proposed agreement.
2.5	**Violating a court order** (failure to appear)	Family 5:430-431; 14:106	Fam.C. §271; CCP 177.5	Allows court to sanction parties to fail to appear at a noticed court hearing.	Prevents the need to litigate and therefore makes this type of sanction far less likely.
2.6	**Sanctions for refusing to exercise custody and visitation orders or failure to assume caretaker responsibility**	Family 6:41;7:597-599;14:60	Fam.C. §3028(a)	Allows courts to sanction parties who refuse to honor their part of custody and visitation orders or agreements in place. The compensation shall be limited to (1) the reasonable expenses incurred for or on behalf of a child, resulting from the other parent's failure to assume caretaker responsibility or (2) the reasonable expenses incurred by a parent for or on behalf of a child, resulting from the other parent's thwarting of the parent's efforts to exercise	Same under proposed agreement.

1	*ATTORNEY FEES AND COSTS*	*Rutter California Family Practice Guide Applicable Section(s)*	*Applicable statutes and case law*	*State's default prenuptial agreement in section 9.7*	*Proposed prenuptial agreement in section 9.9*
				custody or visitation rights. The expenses may include the value of caretaker services but are not limited to the cost of services provided by a third party during the relevant period.	
3	*PROPERTY DIVISION:*	*NA*	*NA*		
3.1	*REAL PROPERTY*	*NA*	*NA*		
3.1.1	Purchased during marriage	Family 8:287 (Home acquired DURING MARRIAGE with separate property down payment and community credit)	Marriage of Lucas (1980) 27 C3d 808, 166 CR 853	Separate property down-payments are reimbursable to contributor as separate property. Appreciation on separate property contributions to equity is not split pro rata, but instead is split in half.	Separate property down-payments are reimbursable to contributor as separate property. Appreciation on separate property contributions to equity is split unevenly as a pro rata share rather than in half. This approach is more complex, but more equitable.
3.1.2	Purchased prior to marriage with separate property of one spouse			Separate property contributed to residence at time of marriage is reimbursable to the contributor. A pro-rata share of the appreciation on that separate property is also separate property of the contributor and is not split evenly. Community contributions to equity are split in half.	Same as state law. Separate property contributions to equity are the only kind authorized. Cannot pay for a separate real property with community investment or checking assets in most cases unless by mutual written agreement.
3.2	*PERSONAL PROPERTY*	*NA*	*NA*	*NA*	*NA*
3.2.1	Accumulated during marriage	Family 8:287 (Home acquired DURING	Fam. C §900 et seq;	Personal property bought during marriage is treated	Character of personal property purchased during

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		MARRIAGE with separate property down payment and community credit) Family 8:840-8:880 (Epstein and Watts Guidelines)	Fam. C §2103-2105 (Preliminary and Final DOD required) Fam. C §2640-2640 (Division of assets)	as community property regardless of the account that paid for it (community or separate).	marriage is determined by the account that paid for it. Vast majority of purchases will come from separate property account and therefore will be separate property and not community property.
3.2.2	Community property gifted to relatives during marriage	Family 8:617 (50% value penalty, plus attorney fees)	Fam. C §1101 (breach of fiduciary duty	Requires written authorization of the other spouse to be valid. Otherwise must be restored to community upon division.	No such thing as community personal property. All property acquired during marriage is separate property since it is paid for out of separate property accounts. Personal property cannot be paid for out of a community account.
3.2.3	Joint investment account			Authorized. Can pay for anything from this account. Usually only require one signature for withdrawals.	Authorized. Require TWO signatures to withdraw funds. This prevents abuses by either spouse.
3.2.4	Joint checking account			Authorized. Can pay for anything from this account. This leads to confusion as to the disposition of property purchased during marriage.	Only one per couple and one per family-owned business. Tight constraints on what spouses can pay for from this account. Used mainly for community expenses but not real or personal property purchases. Regular monthly deposits by either spouse are required in order to meet community expenses.

1	*ATTORNEY FEES AND COSTS*	*Rutter California Family Practice Guide Applicable Section(s)*	*Applicable statutes and case law*	*State's default prenuptial agreement in section 9.7*	*Proposed prenuptial agreement in section 9.9*
					Refusal to make deposits by either spouse when employed results in a liability and a reimbursement to the other spouse. Excess monies deposited to this account are split evenly and deposited electronically to the separate property accounts of either spouse.
3.2.5	Separate property checking and investment accounts			Not described. Assumed not to exist during marriage. Instead, everything is treated as community property, which disadvantages spouses who are employed and advantages spouses who are not employed as far as property issues..	Income deposited to such accounts and property purchased using this account is considered separate property for asset division. Requires only one signature to withdraw and spouses are not required to seek permission of other spouse to make withdrawals, because account is entirely theirs.
3.2.6	Personal property that does not have sales receipts or tracing as separate property			Treated as community property	Treated as community property
3.3	***RETIREMENTS***	***NA***	***NA***	***NA***	***NA***
3.3.1	Retirement benefits accumulated before marriage	Family 8:60 (federal retirement)	NA	Separate property of party who accumulated it.	Separate property of party who accumulated it.
3.3.2	Retirement benefits accumulated during marriage	Family 8:20	Fam.C. 770(a)	Community property subject to division in half.	Separate property of party who accumulated it.
3.4	***REIMBURSEMENTS***	***NA***	***NA***	***NA***	***NA***
3.4.1	Unreimbursed community expenses during marriage			Not reimbursable because everything is community.	Reimbursable to the spouse who paid more than half the expenses. This might occur, for instance, because the

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					other spouse isn't working.
3.4.2	Unpaid arrearages of any kind resulting from delinquent property awards or child support payments	Family 6:507 (arrearages)	CCP §685.010(a) and (b), §685.020(b)	Shall accrue interest at the rate of 10%, compounding monthly, following the final divorce	Same as state law.
3.4.3	Penalties for nondisclosure of community assets as part of divorce	Family 8:617 (50% value penalty, plus attorney fees for undisclosed assets) Family 8:631.1 (unequal division caused by concealment of assets)	Fam. C §1101 (breach of fiduciary duty)	Punitive 100% value penalty for cases of fraud, oppression, or malice	Same as state law.
3.5	Spousal support			Usually awarded for half the length of the marriage at a rate set by the court.	Not authorized
4	*CUSTODY AND VISITATION*				
4.1	***GENERAL PROVISIONS:***	***NA***	***NA***	***NA***	***NA***
4.1.1	IRS tax deduction for child using IRS form 8332	NA	NA	Custodial parent usually gets deduction, even if that parent provides less than 50% of the cost of raising the child.	Parties take turns getting the tax deduction. Wife on odd years and husband on even years.
4.1.2	Both parties are strongly encouraged to attend church regularly with the child	Family 7:403-403.4 (Religion); Family 7:495.1 (religious activities by parents cannot be restricted)	Fam. C §3020 (best interests of child) Marriage of Weiss (1996) 42CA4th 106, 111-113, 49 CR2d 339, 342-344; Marriage of Mentry (1983) 142 CA3d 260, 264-	State law does not prescribe this.	Family constitution recommends significant religious involvement of both parents and child.

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			266, 190 CR 843, 846-847		
4.1.3	Video and audio taping of exchanges	NA	Penal C. §632	Video and audio taping not authorized unless by mutual consent or when in a public place.	Both parties consent to video and audio taping of telephonic visitations and exchanges.
4.1.4	Slander	NA	Fam. C §3020 (best interests of child)	Not prescribed.	Both parents agree never to slander or tell untruths about the other parent, especially in the presence of the child
4.1.5	Photos of child	NA	NA	Not prescribed	Each parent who takes photos of the child during holidays and special occasions shall provide a secondary copy of every photo to the other parent within one week after pictures are received back from developing.
4.1.6	Custody in the event of death of a spouse	***NA***	***NA***	In the event of the death of either the father or the mother, the surviving parent shall take full/100% legal custody of the child.	Same as state law
4.2	***In-Person Visitations:***	***NA***	***NA***	***NA***	***NA***
4.2.1	Physical and legal custody by both parents.	Family 7:340 (joint custody)	Fam. C §1830 (family conciliation court jurisdiction); Fam. C §3002 – 3003 (custody definitions) Fam. C §3011;3031 (domestic violence implications)	Joint by default.	Joint physical and legal custody

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			Fam. C §3040 (joint custody preferred)		
4.2.2	Custody time share	Family 7:480-486 (visitation rights) Family 7:596 (change of custody warranted when one parent interferes with visitation of other)	Fam. C §3020 (best interests of child) Moffat v. Moffat, supra; Burchard v. Garay (1986) 42 C3d 531, 540, 229 CR 800, 806, fn. 11; Catherine D. V. Dennis B. (1990) 220 CA3d 922, 932, 269 CR 547, 553-554	Custody time share is decided by the courts	50% timeshare for both parents with parents sharing decision making responsibility and authority
4.2.3	Child support amount	Family 6:165-6:250 (guideline formula)	Fam. C §4050-4076 (child support)	Child support set by state guidelines	No child support because of 50% time share. If court order child support over the objections raised in this agreement, then spouse receiving said support agrees to refund amount to other spouse in full every month.
4.2.4	Missed visitations	NA	NA	Determined by court.	Missed visitations will be made up by extending the time of drop off during the next visitation with the parent who has been deprived of visitation time prior to that and shall be negotiated electronically during the pickup time for that visitation.
4.2.5	Advance notification of missed visit	NA	NA	Determined by court	Each parent must notify the other parent via email and a letter at least 24

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					hours in advance that they can't make visitation
4.2.6	Work conflicts with visitations	NA	NA	Determined by court	Work conflict is the only authorized reason for missed visitations
4.2.7	Documentation required for work conflicts	NA	NA	Determined by court	Work conflicts must be documented with a signed excuse statement from the parent's employer in order to be legitimate.
4.2.8	Unauthorized or unexcused missed visitations	NA	NA	Determined by court	Each occurrence of unauthorized or unexcused missing of visitation exchange shall be subject to $500 fine to the party who missed the visitation
4.3	***Telephonic/electronic Visitations:***	***NA***	***NA***	***NA***	***NA***
4.3.1	Restrictions on child-initiated contact with either parent	Family 7:310.6 (contact with child should approximate family situation as closely as possible)	Fam. C §3020 (best interests of child)	Determined by court	No restrictions whatsoever on CHILD (not parent) INITIATED calls or video teleconferences. This will always be in the best interests of the child
4.3.2	Promoting and encouraging telephonic contact with parent who is not present with the child	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	Determined by court	Both parties agree to promote and encourage telephonic/electronic visitation as often as possible
4.3.3	Quickdial button for use by children to call noncustodial parent	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	Determined by court	Both parties shall ensure that a quickdial button is provided on their phone with the other parent's telephone number assigned to it and which the child is frequently

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					made aware of
4.3.4	Time limits on telephone contact	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	Not specified	Time limits on telephonic or electronic visitations initiated by either parent shall be no less than two hours per day. This is in disagreement with the custody evaluator, who recommended only one father-initiated call per week for no more than 15 minutes.
4.3.5	Time window for parent-initiated telephone calls	NA	Fam. C §3020 (best interests of child)	Not specified	Time window for parent-initiated calls shall be no less than one hour commencing at 6:30pm daily or at least three times weekly
4.3.6	Video contact and computer contact between child and divorced parent	Family 7:310.6 (contact with child should approximate family situation as closely as possible)	Fam. C §3020 (best interests of child)	Not specified	Both parents shall buy a computer for use by the child and install a digital camera ($69) and provide an Internet cable modem connection ($46/month) at their residence that can and will be used for video teleconferencing using Microsoft Netmeeting with the parent who does not have custody at that time. Father volunteers to set this up and fix any problems at no charge. The computer of either parent will be equipped with NetNanny or an equivalent product that will prevent the child

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					from using the computer for unauthorized purposes. This computer will be exclusively and only for the use of the child, doing his schoolwork, entertainment, and implementing electronic visitations.
4.3.7	Use of cordless phone during telephonic visits				Both parties will get a cordless phone and use it when the parent who isn't present calls and wants to talk to the child. They will ensure when the parent calls that they speak into the phone when they ask the child if he wants to talk to the other parent and then put the phone up to the child's mouth when he or she responds. This will prevent the parent who has the child from lying about whether the child does or doesn't want to talk.
4.3.8	Recording of telephonic contact between child and parent	Family 1:62-1:62.1 (eavesdropping illegal)	18 USC §2510 Williams v. Williams (1998) 229 Mich. App. 318, 581 NW2d 777, 780-781	Recording of telephonic contact is prohibited without consent of both parties.	Recording of telephonic visitations is authorized for either parent, but the parties agree NOT to discuss these recordings with third parties, play them, or use or reference them in court pleadings information gleaned from

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					the child about these conversations, subject to a $1,000 for each occurrence.
4.4	***Daycare Provisions:***	***NA***	***NA***	***NA***	***NA***
4.4.1	First right of refusal to provide daycare for child by other parent	Family 7:310.6 (contact with child should approximate family situation as closely as possible)	Fam. C §3011, 3020, 3162 (frequent and continuing contact of child with both parents)	Determined by court.	Parent who does not have custody at any given time should have first right of refusal to provide daycare when custodial parent needs it.
4.4.2	Distance to daycare provider	NA	NA	Determined by court	Commercial daycare provider should reside within five miles of either parent's residence.
4.4.3	Deciding on daycare providers	NA	NA	Determined by court	Daycare provider mutually stipulated in writing. If agreement cannot be reached, the lowest cost provider presented by either party that is within five miles of either parent's home shall be chosen.
4.4.4	Language of daycare environment	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	Determined by court	Daycare provider and other children watched by that provider shall speak only English. School is the proper environment to learn a secondary language. This is necessary for the proper socialization of the child and is in the best interests of the child.
4.4.5	Timeshare credits for daycare	Family 6:168.5-6:168.6 (timeshare credit for daycare)	Marriage of Whealon (1997) 53 CA4th 132, 145, 61 CR2d 559, 567	Determined by court	Parent who has overnight custody of the child on a given day also gets timeshare credit for any daycare or school the child attends during that

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					day.
4.5	***CHILD SUPPORT:***	***NA***	***NA***		
4.5.1	Reimbursement of child care expenses during separation	Family 6:510.1-6:510.3 6:512.10	Fam.C. §4009 Fam.C. §3028	Custodial parent usually reimbursed for half of documented expenses	Custodail parent shall receive a reimbursement only for actual expenses incurred.
4.5.2	Sharing of costs of long-distance visitations	Family 7:566-7:584.1 (Burgess applied)	Marriage of Burgess, supra, 13 C4th at 32-33, 51 CR2d at 449	Visitation costs usually awarded to parent most able to pay.	When either party moves more than 50 miles away from other party, we agree to split the cost of making visitation possible, where the party who moved away with or from the child first pays 60% of the cost. This will discourage either spouse from moving away from the other parent.
4.5.3	Move-away penalties in the event of divorce	Family 7:566-7:584.1 (Burgess applied)	Fam. C §3020 (best interests of child)	Not usually awarded.	There is a 33% penalty of the child support amount against the custodial parent if that parent decides to move more than 100 miles away from the non-custodial parent. This will encourage involvement by both parents in the child's life.
4.5.4	Child medical expenses	Family 6:294 (50-50 add-on child support expenses)	Fam. C §4062;4063 (child care)	Usually split 50-50	Child –related medical expenses for Casey that are not covered by health insurance will be split 50-50 by both parents
4.5.5	Destination of support checks	Family 7:310-7:310.6 (best interests of the child)	Fam. C §4062;4063 (child care)	Determined by court	Child support or 4062 checks shall not be sent to PO boxes. They must be sent to the actual address

1	*ATTORNEY FEES AND COSTS*	*Rutter California Family Practice Guide Applicable Section(s)*	*Applicable statutes and case law*	*State's default prenuptial agreement in section 9.7*	*Proposed prenuptial agreement in section 9.9*
					where the child and custodial parent reside. This will ensure that the noncustodial parent is kept continually informed of the whereabouts of the child and the custodial parent.
4.5.6	Required evidence of reimbursible expenses	Family 7:310-7:310.6 (best interests of the child)	Fam. C §4062;4063 (child care)	Determined by court.	Evidence of expenses sent to the parent paying child support must include photocopies of BOTH SIDES of cancelled checks clearly showing the signature of the payee. For the purposes of daycare costs, the following records shall be provided to the other parent: 1. Daycare provider's name. 2. Date and time of day that care was provided. Whether and how the father was offered first right of refusal to provide the care.
4.5.7	Wage assignment for daycare or medical expenses	Family 6:299.11-6:299.14 (add-on child support expenses are billable)	Fam. C §4062;4063 (child care)	Wage assignment shall NOT apply to daycare or medical expenses. These will be paid by personal check upon receipt of a bill. Daycare expenses shall not exceed the fair market rate if provided by a relative	Same as state law

1	*ATTORNEY FEES AND COSTS*	*Rutter California Family Practice Guide Applicable Section(s)*	*Applicable statutes and case law*	*State's default prenuptial agreement in section 9.7*	*Proposed prenuptial agreement in section 9.9*
4.5.8	**Child support past 18**:	Family 6:59.5	Family §3901	The duty of support continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and who is not self-supporting, until the time the child completes the 12th grade or attains the age of 19 years, whichever occurs first. There will be no child support after the child reaches age 18	Same as state law
4.5.9	**Trust funds**:	Family 6:59.5, 6:177.2	Family §3901 --- Marriage of Chandler (1997) 60 CA4th 124, 130, 70 CR2d 109, 113	Although it is an abuse of discretion for the court to order that a portion of the child support be paid into a trust fund, there is no reason why a parent can't assume this and notify the child of this without litigating it.	Same as state law.
4.5.10	**SANCTIONS: Sanctions for refusing to exercise custody and visitation orders or failure to assume caretaker responsibility**	Family 6:41;7:597-599;14:60	Fam.C. §3028(a)	The compensation shall be limited to (1) the reasonable expenses incurred for or on behalf of a child, resulting from the other parent's failure to assume caretaker responsibility or (2) the reasonable expenses incurred by a parent for or on behalf of a child, resulting from the other parent's thwarting of the parent's efforts to exercise custody or visitation	Same as state law.

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				rights. The expenses may include the value of caretaker services but are not limited to the cost of services provided by a third party during the relevant period.	
4.5.11	**CONCEALMENT OF CHILD ISSUES:**	Family 7:605	*Marriage of Comer*, supra 14 C4th at 526, 59 CR2d at 167; *Creed v. Schultz* (1983) 148 CA3d 733, 738-739, 196 CR 252	**Court may require child support to be paid to designated trustee for transmission to custodial parent when child is produced for visitation.**	Same as state law.
4.6	***SCHOOLING***	***NA***	***NA***	***NA***	***NA***
4.6.1	Private school prohibited	NA	Fam. C §3020 (best interests of child)	Child will not attend private school unless the custodial parent decides to put the child in private school.	Same as state law.
4.6.2	Parent requesting private school pays for it		NA	Court doesn't usually award costs for private school. Recommends attending public schools instead.	If the court orders private school then the parent requesting it will pay the whole amount
4.6.3	Timeshare credits	Family 6:168-168.1 (adjustment tied to "physical responsibility" rather than custody)	Marriage of Drake (1997) 53 CA4th 1139, 1160, 62 CR2d 466, 480 (citing text) _____ Fam. C. §4050	Determined by court. This provision not usually supported by court.	Parent who has overnight custody of the child on a given day also gets timeshare credit for any school the child attends during that day.
4.7	***NOTIFICATION PROVISIONS***	***NA***	***NA***	***NA***	***NA***
4.7.1	Travel outside of county	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	Both parents must notify each other by postal letter and email at least 144	Same as state law

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				hours in advance of overnight travel of the children outside of San Diego County. The notification shall describe in detail their itinerary, stops, phone numbers, addresses, etc. Nontraveling parents agree not to divulge this information to third parties.	
4.7.2	Contact information	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	Both parties shall keep the other informed at all times of their address, phone number (pager, home, work phones), and email address (work and home).	Same as state law
4.7.3	Activities requiring both parents involvement:	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	Parents shall keep each other informed at all times of:	Same as state law
4.7.3.1	Child's teacher and doctor information	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	The location of the child's teacher(s), doctor(s), and therapist(s) address and phone number provided within one week of the time it is first known.	Same as state law
4.7.3.2	Health traumas	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	The results of health traumas, medical emergencies, regular checkups by providing a copy of the medical records for each visit not attended by the other parent and mailing/faxing them within one week of the incident	Same as state law

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4.8	***PARENT COMMUNICATION PROVISIONS:***	***NA***	***NA***	***NA***	***NA***
4.8.1	Communication provisions between parents	Family 7:310-7:310.6 (best interests of the child)	Fam. C §3020 (best interests of child)	Both parents shall be responsible for maintaining open communication with their partner in pursuit of the child's best interest. This will be provided by:	Same as state law
4.8.2	Restraining order impact	Family 5:65-5:67 (protective orders)	Fam. C. §6320	During any period of time after divorce/separation that a parent lives in a residence which has a restraining order issued against the other parent, an exception shall be made allowing calls to that parent's home for the purposes of arranging custody and visitation or for telephonic visitation with the child	Same as state law
5	**DOMESTIC VIOLENCE**				
5.1	Proof of domestic violence			False allegations are sufficient, and most of the time are never verified with testimony in court	Requires a polygraph test and a recording to prove
5.2	Kickout orders			Courts can kick out offending spouse from his OWN house!	Not authorized. Only recourse for an aggrieved spouse is to vacate residence.
5.3	Rape charges			Authorized between spouses. What a messed up world!	Not authorized, since marriage is about sexual submission
5.4	Use of polygraph tests to prove			Not authorized	Authorized and clearly defined
5.5	Discovery protective orders to hide			Authorized and	Not authorized, so that

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				encouraged	public reproach may be used to restore credibility of a falsely accused spouse.
6	**CUSTODY EVALUATIONS**				
6.1	Requirements and qualifications for custody evaluator			Not defined	Very clearly defined to prevent abuses.
6.2	Process for conducting custody evaluation			Not defined	Very clearly specified to prevent abuses.
7	**DISCOVERY AND EVIDENCE**				
7.1	**Pro Per litigants** entitled to "work product" protection.	Family 11:140.1	CCP §2018 ---------- Dowden v. Super.Ct. (Dowden) (1999) 73 CA4th 126, 135, 86CR2d 180.187	Allows pro per litigant to have work product protections allowing them not to have to provide their work products as part of normal discovery.	Same as proposed agreement.
7.2	**Admissible evidence:**		CCP §2030 CCP §2033(n) CCP §2031 CCP §2032 CCP §2028	Admissible evidence includes: Interrogatories Requests for Admissions Business Record subpoenas Physical or Mental examinations Written depositions Testimony of Expert Witnesses	Adds polygraph tests
7.3	**Inadmissible evidence:**		Evid.C §1324 CCP §§1103-1105 Evid.C. §1151 Evid.C. §1152 Evid.C. §1152.5 Evid.C. §1153	Inadmissible evidence includes: Improper Character evidence Improper Habit Evidence Subsequent Remedial	Same as proposed agreement.

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			Evid.C. §1155 Evid.C. §§1150-1154	Measures Offers of Compromise Communications During Mediation Proceedings Offer to Plead Guilty or Withdraw Plea of Guilty by Criminal Defendant Evidence of Liability Insurance Content of settlement offers	

9.9 Pre-Nuptial/Marital Agreement

Instead of the default pre-nuptial agreement of the State of California listed above, the spouses or prospective spouses instead agree to use the following pre-nuptial agreement, which is much better than the state's, much fairer to both parties, and far less likely to encourage litigation. The agreement is intended to remove the negative aspects of marriage and make it more like the dating relationship: Based on mutual respect, choice, and interdependence, rather than fear and legal intimidation. It prevents the following types of problems that the default California pre-nuptial agreement encourages:

1. Encourages the parties to think very carefully about the expectations they have for marriage and share them with their partner and write them down. This prevents problems where the parties have unrevealed or unrealistic expectations that cause conflict.
2. Discourages domestic violence and physical abuse (see section 7 and 8.3.1.2).
3. Discourages adultery or infidelity by punishing it if revealed through a polygraph test (section 9.1.1).
4. Discourages gold-digging (marrying someone for their money):
    - 4.1. Minimizes financial dependence of one party on the other and encourages spouses to have a more balanced life that includes a career and interests and friends outside of the marriage. If spouses know ahead of time that they are exclusively responsible for their own retirement and won't get spousal support, they are much more likely to work and be economically self-sufficient, whether married or not. Marriage should never be a crutch for either spouse to not be responsible for themselves.
    - 4.2. Keeps retirements separate property
    - 4.3. Disallows spousal support.
    - 4.4. Prevents gifting community assets to third parties without the written consent of both parties (see section 3.2.5 and 8.4.1.5).
    - 4.5. Prevents destroying of financial records and punishes spouses who won't provide financial information to the other spouse (see sections 8.4.1.9 and 9.3.13).
5. Discourages emotional abuse, because it:
    - 5.1. Prevents filing of restraining or kick-out orders against a spouse based on false allegations (verifies them with polygraph test).
    - 5.2. Prevents spouses from using their control over money or assets in the marriage to control or coerce their partners.
    - 5.3. The polygraph test portion of it discourages lying to gain financial advantage in the divorce or custody settlement. It also sanctions false allegations of child or spousal abuse (section 9.4.1.2).
    - 5.4. Minimizes the need for litigation and legal threats against either party to enforce legal rights.
    - 5.5. Minimizes emotional dependence of one party on the other and encourages spouses to have a more balanced life that includes interests and friends outside of the marriage. This encourages interdependence rather than dependence, which we said in section 9.7.1, question 1, was an important ingredient to happy marriage.
    - 5.6. Provides a structured vehicle for resolving all major family disputes and issues so anger doesn't build and turn into physical abuse or emotional abuse.

We believe this agreement encourages parties to treat marriage as icing on the cake instead of the cake, but it also assumes there is an irrevocable aspect to the commitment. It is meant to remove the stigma of marriage viewed from the man's perspective that is described in section 4.15: The Humorous Side

of Marriage. Note that any issue appearing in the default agreement above that is *not* addressed in the agreement below will be assumed to be handled as indicated in the default agreement. Readers who disagree with the notion of a prenuptial agreement are encouraged to read section 9.7 before they read this section.

As we indicated in the introduction to this chapter, some states support the concept of covenant marriage. Unfortunately, California does not. However, pre-nuptial agreements can be used to extend the marriage obligation in order to make the marriage the equivalent of a covenant marriage. Christian marriages would be the most logical type of marriage to do this in, because Christians are not allowed to get divorced by God unless there has been sexual immorality. The pre-nuptial agreement below has the goal of making the marriage into the equivalent of a covenant marriage.

The Bible advocates in Prov. 25:8-10 trying to keep things out of court, and pre-nuptial agreements have the tendency to reduce the possibility that marriages or divorces ever get litigated and that the spouses get what they expect out of the relationship while still preserving their privacy and dignity:

> *"Do not go hastily to court, for what will you do in the end, when your neighbor has put you to shame? Debate your case with your neighbor, and do not disclose the secret to another; lest he who hears it expose your shame, and your reputation be ruined."*

Another interesting scripture from the bible gives the following advice to men in Prov. 31:3:

> *Do not give your strength to women, nor your ways to that which destroys kings.*

We would like to add to this that men should also not give their strength or control over their lives or the fruit of their marriage to the *state* either, and the state's default prenuptial agreement does exactly that, which is why a replacement agreement that nullifies the power grab by the state is needed.

We therefore think it makes a lot of sense to have a pre-nuptial agreement for the reasons we stated above, where the parties who are married are Christian and they want an enduring relationship that doesn't get litigated and which satisfies the expectations of all parties concerned. The above scripture also advocates keeping the pre-nuptial agreement secret and not telling anyone else about it. What is your view?

Below is the pre-nuptial agreement we agree to honor and be legally bound by during the course of our marriage. It addresses and corrects all of the shortcomings of California's default pre-nuptial agreement. It contains a superset of the clauses that can be used by all couples. Couples should feel free to modify and tailor it for their specific circumstances by deleting clauses that they feel are unnecessary.

PRENUPTIAL AGREEMENT

1. WHEREAS, the parties known as _____ and _____, intend to reside together in the future as Husband and Wife, without obtaining a government issued Marriage License;

2. and WHEREAS, they desire to marry under the Laws of God protected by the Common Law, without state intervention, and with full authority to act under God's Law. See Article 1, Section 10 of the U.S. Constitution, which specifically prohibits any state government from interfering with this contract:

> *No State shall…pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.*

3. and WHEREAS this relationship is undertaken in good faith and in pursuit of the blessings of life, liberty, happiness, and prosperity for the parties and their future children and families.

4. and WHEREAS, they desire to affix their respective rights and liabilities that may result from this union of marriage and joint residency as Husband and Wife;

5. and WHEREAS, they have fully and completely disclosed to one another their current financial status, including assets and liabilities;

6. and, WHEREAS, they have each had an opportunity to consult with separate legal counsel of their own choice as each independently wishes to consult and paid for out of their own separate funds;

7. and, WHEREAS, they mutually stipulate that their respective legal counsel are considered competent and have fully and completely informed them of their legal rights and responsibilities under this agreement;

They now therefore agree:

8. That they shall be known as husband and wife from the date of solemnization as described within the enclosed Notice of Intention to Marry. That the title of Sui Juris shall remain with _____ as husband and Alieni Juris shall remain with _____as wife.

9. That the New King James Version of the Bible, their common faith in a Christian God, and the Family Constitution they have both been given a copy of, shall be the ultimate authority, reference, and arbiter for modeling normal and proper relationships and conduct between the parties and their prospective family and these will be the reference point at all times in the event of any dispute.

10. That love, commitment, personal responsibility, and respect shall be the foundation of the relationship between the two parties and their family and they are to be exercised at all times with empathy and due consideration of the feelings and needs of others by putting those needs above one's own. Respect and love shall include:

- 10.1 Behaving and communicating in a truthful, positive, polite, calm, and constructive way at ***all*** times.
- 10.2 Judging righteously by judging the ***behavior*** and not the ***person***. Seeking only God's glory, peace, and justice for others rather than our own selfish desires in the process of judging (see Lev. 19:15; Is. 1:17; Prov. 10:21; Prov. 31:8-9; 1 Cor. 11:31; John 7:24; James 1:22; Rom. 2:13; Rom. 14:13).
- 10.3 Never condemning or slandering or belittling others, especially in public or in front of other family members or friends. Speaking facts and truths about a person for which we have personal knowledge shall ***not*** be regarded as condemnation or slander.
- 10.4 Focusing on solving problems and objectively analyzing their behavioral causes rather than blaming the person and avoiding responsibility or participation in a mutually agreeable solution to change behavior and improve the situation.
- 10.5 Being without hypocrisy or anger, but instead purging iniquity from the family with mercy and truth (Prov. 16:6).
- 10.6 Mutual submission to the sexual, affection, and communication needs of one's spouse at all times and without question or resistance. This means ***not*** using deprivation of communication or sex or affection as a weapon against one's spouse to get what a party wants, which is NOT an expression of unconditional love, but is instead a type devious and selfish manipulation masquerading as love that will eventually destroy the relationship and the marriage. See 1 Cor. 7:1-5 for further details.
- 10.7 Yielding time out of every day to do what the other party desires and to communicate and commune together in prayer and supplication with God our Father.

11. That they should they bear or adopt children in their union, that all should be reared in God's Law jointly with the responsibility, custody, and care of the children ***equally divided*** and sustenance maintained by both parties. In the event of death of either spouse prior to the children reaching 18, the surviving spouse agrees to care for the children. The parties

agree not to pursue litigation to affect or undermine this custody and care arrangement of the children and agree not to make any adverse allegations about the character or parenting abilities of the other spouse. They agree ***never*** to request that a court order their spouse to pursue counseling, seek parenting classes, or undergo any kind of psychiatric evaluation of any kind. This is in keeping with the idea that it is regarded as a fundamental right to raise and care for one's child in a way that each parent desires ***without*** intervention or coercion or character assassination from lawyers, the government, expert witnesses, or the other spouse.

12. That all assets or income purchased or acquired or beneficially received in the name of one party rather than in joint name during the marriage shall be regarded as separate (solely owned) rather than jointly owned or community property within the meaning of state and federal law. This shall include appreciation, dividends, or interest on separate property assets acquired prior to marriage of the parties. There shall be a rebuttable presumption on the part of both spouses that absent evidence of joint ownership or purchase from joint funds, all property in the custody of the parties shall be presumed to be separate property. The recipient or owner of said separate property shall have the ***exclusive right*** to manage and dispose of such property in any way he or she sees fit without consulting his or her partner, but is encouraged to manage such assets for the benefit of both parties and the family. The parties agree not to get angry, argue, object, or punish in any way either party for the exercise of such property rights.

13. That for the purchase of assets in joint names, the same shall be considered held in ***tenancy in common***. Each party shall contribute from their own income and resources such funds as necessary for the maintenance of the union as well as the payment of all upkeep, taxes, and other fees or charges on such property. That pro rata proportion of income and effort which they personally contribute to the sustenance of jointly held assets during the marriage shall be considered to be their separate property (and not community property) for the purposes of state and federal law.

14. That in the filing of any tax returns or other government or legal documents by either spouse, that both spouses agree to always file in the status of ***single*** and not list or identify their spouse. This will prevent implicating or endangering assets of an innocent spouse in the event that tax collection, court judgment, or litigation activity occurs against the other spouse.

15. That they promise never to litigate in order to demand or request spousal support or child support, in a court of law or through binding arbitration, from their spouse for any reason. They instead agree to take full and complete personal responsibility for their own support and half the support of their children, and their own legal expenses in their entirety at all times in the future. They mutually agree, however, that they reserve the right to ***voluntarily***, help and assist their spouse and their children as they see fit and as their conscience and their God and the bible dictate, but are not to apply government or legal or emotional or sexual compulsion to do so under any circumstances. This ensures that trust and good faith shall be the motivation behind ***all*** conduct in the relationship at all times. Such requirement derives from the following scriptures found in the bible:

15.1 *"But avoid foolish disputes, genealogies, contentions, and strivings about the law; for they are unprofitable and useless. Reject a divisive man after the first and second admonition, knowing that such a person is warped and sinning, being self-condemned."* (Titus 3:9)

15.2 *"Love suffers long and is kind; love does not envy; love does not parade itself, is not puffed up; does not behave rudely, does not seek its own, is not provoked, thinks no evil; does not rejoice in iniquity, but rejoices in truth; bears al things, believes all things, hopes all things, endures all things. Love never fails."* (1 Cor. 13:4-8)

16. That any litigation relating to or intended to undermine, change, or invalidate this marriage contract or any portion thereof be paid for in its entirety by the spouse contesting it, and this includes legal fees on both sides of any dispute. Furthermore, any fees or awards of property resulting from such litigation shall be returned to the original owner of said property by the receiving spouse, thus rendering such litigation useless and without effect. Parties agree to divulge to each other at any time the content of any and all client files, evidence, notes, or litigation materials maintained by their attorney relating to any litigation against their spouse or a family member of their spouse. Parties agree NOT to use any papers, evidence, or litigation materials in court that they haven't disclosed to their spouse at least two weeks prior to filing them with any court.

17. That should allegations of illegal, unethical, domestic abuse, child abuse, or violent acts be alleged by a party against the other party or their offspring or adopted children, then ***both*** parties mutually consent ***in advance*** to undergo polygraph testing to confirm the disposition of such allegations, and to truthfully and completely answer any number of questions under oath during said testing as authored by the other party or his/her counsel. They also stipulate in advance to admit such evidence into a court of law for use by the judge in reaching a finding. Whatever the outcome of any such allegations or instances of abuse, the parties agree that this contract and any civil or criminal litigation resulting from their relationship

shall NOT be permitted by either party in any way or at any time to affect or restrict the Second Amendment right to bear arms of either party.

18. That the marriage between the parties is to be regarded as a confidential fiduciary relationship, and as such, the parties to the marriage agree not to divulge any medical, sexual, personal, or financial details about their spouse or their relationship to parties outside the relationship without express written consent of their spouse while that spouse is alive. This includes a prohibition against the furnishing of evidence or testimony to law enforcement, legal professionals, or the courts in the administration of justice. Likewise, the parties agree *not* to call anyone, including their friends and family members, as witnesses against a party to this agreement or the blood relatives of a party to this agreement, in a court of law.

19. Other than debts validly contracted for services or materials or otherwise related to joint property of the Husband and Wife, if any, the Husband, Sui-Juris, shall have the right to obligate, act for, contract for and to the benefit of the other party known as Wife, Alieni-Juris under the Common Law. This includes the management of jointly-held property but not separate property.

20. SEVERABILITY CLAUSE: If, for any reason, any provision of this agreement is held invalid, it is mutually stipulated that all other remaining provisions of this agreement shall continue to be legally binding against the parties. If this entire agreement is held invalid or cannot be enforced, then:

20.1 To the full extent permitted by law any prior agreement between the parties (or any successor thereof) shall be deemed reinstated as if this agreement had not been executed.

20.2 The parties will treat their relationship as if it never existed and agree to deny in any court of law that they were ever married or met any legal requirements necessary for them to be treated by the state or federal government as if they were married.

21. This is the full agreement of the parties and there are no agreements other than those stated herein. This agreement shall only be modified by a writing executed by both parties hereto and witnessed by at least one notary.

*****READ CAREFULLY AS THIS IS A LEGAL BINDING AGREEMENT******

AGREED AND ACCEPTED:

NAME/HUSBAND:_____
ADDRESS:_____
CITY/STATE:_____
COUNTY:_____

NAME/WIFE:_____
ADDRESS:_____
CITY/STATE:_____
COUNTY:_____

Prospective Husband signature: Date:

Prospective Husband's attorney signature: Date:

State Bar #:_____

Prospective Wife signature: Date:

Prospective Wife's attorney signature: Date:

State Bar #:_____

STATE OF _____)
COUNTY OF _____)

On_____before me_____personally appeared _____personally known to me (proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Signature of Notary:_____