



WHY STATES SHOULD ADOPT THE UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

The Uniform Premarital and Marital Agreements Act (UPMAA), promulgated by the Uniform Law Commission in 2012, establishes procedural and substantive safeguards for marital agreements, and brings them into accord with safeguards for premarital agreements.

While most states have laws addressing the creation and enforcement of divorce-focused premarital agreements, the standards for regulating those agreements vary greatly from state to state. States' laws regarding the enforcement of marital agreements have been far less settled and consistent; some states have neither case-law nor legislation addressing the creation or enforceability of marital agreements, while others have enacted varied approaches to guide courts in enforcing such agreements. The discordant standards for both premarital and marital agreements have created conflicts within the law and uncertainty about enforcement as couples move from state to state.

In today's mobile society, it is particularly important that the rules governing the enforceability of premarital and marital agreements be standardized. The UPMAA clarifies and modernizes largely divergent state laws and creates a harmonized and uniform approach to premarital and marital agreements.

Among its attributes, the UPMAA:

- Requires both premarital agreements and marital agreements to be in writing and declares them to be enforceable without consideration, thereby modernizing existing state law;
- Offers couples a flexible framework for premarital and marital agreements that promotes responsible planning and informed decision making, and encourages prospective spouses to consider in advance a wide spectrum of issues that may affect their marriage;
- Provides courts in every state a framework for determining an agreement's validity, regardless of where it was executed;
- Permits non-enforcement of agreements that are found to be unconscionable at the time of signing by providing that unconscionability and failure of disclosure are alternative grounds for refusing to enforce an agreement, each adequate on its own;
- Bars enforcement of an agreement entered into involuntarily or as the result of duress or that limits remedies available to a party for domestic violence; and
- Affirms traditional choice of law and conflict of laws principles in determining the validity and meaning of premarital and marital agreements.