



THE UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT
-SUMMARY-

Currently every state allows at least some divorce-focused premarital agreements to be enforced, though the standards for regulating those agreements vary greatly from state to state. The Uniform Premarital Agreement Act was promulgated in 1983, has been adopted by twenty-six jurisdictions. Although the UPAA brought consistency to the legal treatment of premarital agreements, uniformity has declined as states have amended the act in various ways throughout the years. State law addressing marital agreements has been far less settled and consistent. Some states have neither case law nor legislation, while the remaining states have created a wide range of approaches.

The Uniform Premarital and Marital Agreements Act (UPMAA) brings clarity and consistency across a range of agreements between spouses and those who are about to become spouses. The focus is on agreements that purport to modify or waive rights that would otherwise arise at the time of the dissolution of the marriage or the death of one of the spouses.

The general approach of this act is that parties should be free, within broad limits, to choose the financial terms of their marriage. This act chooses to treat premarital agreements and marital agreements under the same set of principles and requirements. The limits are those of due process in formation, on the one hand, and certain minimal standards of substantive fairness, on the other. Because a significant minority of states authorize some form of fairness review based on the parties' circumstances at the time the agreement is to be enforced, states can choose to insert an option refusing enforcement based on a finding of substantial hardship at the time of enforcement. And because some states put the burden of proof on the party seeking enforcement of some or all of these sorts of agreements, the act also presents alternative language to reflect that burden of proof. The Act also establishes the terms for waiving or modifying rights at divorce and for terms waiving or modifying rights at the death of the other spouse.

Section 3 clarifies the narrow application of the act. The UPMAA does not apply to separation agreements, nor does it affect the rights of third parties when a spouse is involved in a transfer of property in which the other spouse's waiver of rights is required.

Section 4 affirms that normal principles of choice of law and conflict of laws apply to premarital agreements and marital agreements. Following the Uniform Commercial Code, choice of law provisions are limited to jurisdictions with a "significant relationship to the agreement or either party."

Section 6 declares that both premarital agreements and marital agreements are enforceable without consideration. This may depart from the existing law for marital agreements in some states, but it reflects the modern approach that the concerns generally policed indirectly by a consideration requirement are better policed directly through procedural requirements and tests of unconscionability.

Section 9 establishes the enforcement standards. Under this Act, unconscionability and failure of disclosure are alternative grounds for making an agreement unenforceable, each of them adequate on its own. Additionally, enforcement will be refused if the agreement was entered involuntarily or as the result of duress, if the party challenging the agreement did not have access to independent legal representation, and if an unrepresented party did not receive a notice of waiver of rights or a clear explanation of the effect of the agreement. Section 10 addresses terms of an agreement that may be unenforceable or binding as a matter of public policy.