

UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIRST YEAR
NASHVILLE, TENNESSEE
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WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Premarital and Marital Agreements Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Amendment” means a modification or revocation of a premarital agreement or marital agreement.

(2) “Marital agreement” means an agreement between spouses who intend to remain married which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed after the spouses marry, of a premarital agreement or marital agreement.

(3) “Marital dissolution” means the ending of a marriage by court decree. The term includes a divorce, dissolution, and annulment.

(4) “Marital right or obligation” means any of the following rights or obligations arising between spouses because of their marital status:

(A) spousal support;

(B) rights to property, including characterization, management, and ownership;

(C) responsibility for liabilities;

(D) rights to property and responsibility for liabilities at separation, marital dissolution, or death of a spouse; or

(E) allocation and award of attorney’s fees and costs.

(5) “Premarital agreement” means an agreement between individuals who intend to marry which affirms, modifies, or waives a marital right or obligation during the marriage or at

separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed before the individuals marry, of a premarital agreement.

(6) “Property” means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest therein.

(7) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) “Sign” means with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Legislative Note: If your state recognizes nonmarital relationships, such as civil unions and domestic partnerships, consider whether these definitions need to be amended.

SECTION 3. SCOPE.

(a) This [act] applies to a premarital agreement or a marital agreement signed on or after [the effective date of this [act]].

(b) This [act] does not affect any right, obligation, or liability arising under a premarital agreement or marital agreement signed before [the effective date of this [act]].

(c) This [act] does not apply to:

(1) an agreement between spouses affirming, modifying, or waiving marital rights or obligations which requires court approval to become effective; or

(2) an agreement between spouses intending to obtain a marital dissolution or court-decreed separation which resolves their marital rights or obligations and is signed when a proceeding for marital dissolution or court-decreed separation is anticipated or pending.

(d) The application of this [act] to the waiver of a marital right or obligation in a transfer or conveyance of property by a spouse to a third party does not adversely affect the rights of a bona fide purchaser for value.

SECTION 4. GOVERNING LAW. The validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement are determined:

(1) by the law of the jurisdiction designated in the agreement if the jurisdiction has a significant relationship to the agreement or either party, and the designated law is not contrary to a fundamental public policy of this state; or

(2) absent an effective designation described in paragraph (1), by the law of this state, including the choice of law rules of this state.

SECTION 5. PRINCIPLES OF LAW AND EQUITY. Unless displaced by the provisions of this Act, principles of law and equity supplement the provisions of this Act.

SECTION 6. FORMATION REQUIREMENTS. A premarital agreement or marital agreement must be in a record signed by both parties. The agreement is enforceable without consideration.

SECTION 7. WHEN AGREEMENT EFFECTIVE. A premarital agreement is effective on marriage. A marital agreement is effective on signing by both parties.

SECTION 8. VOID MARRIAGE. If a marriage is determined to be void, a premarital agreement or marital agreement is enforceable to the extent necessary to avoid an inequitable result.

SECTION 9. ENFORCEMENT.

(a) A premarital agreement or marital agreement is unenforceable if a party against whom enforcement is sought proves any of the following:

(1) the party's consent to the agreement was involuntary or the result of duress;

(2) the party did not have access to independent legal representation under subsection (b);

(3) unless the party had independent legal representation at the time the agreement was signed, the agreement did not include a notice of waiver of rights under subsection (c) or an explanation in plain language of the marital rights or obligations being modified or waived by the agreement; or

(4) before signing the agreement, the party did not receive adequate financial disclosure under subsection (d).

(b) Access to independent legal representation under this section requires that:

(1) the party had a reasonable time both to:

(A) decide whether to retain an independent lawyer before signing a premarital agreement or marital agreement and

(B) locate an independent lawyer, obtain advice, and consider the advice provided; and

(2) if the other party was represented by a lawyer, either the party had the financial ability to retain a lawyer or the other party agreed to pay the reasonable fees and expenses of representation.

(c) A notice of waiver of rights under this section requires language, conspicuously displayed, substantially similar to the following, as applicable to the agreement:

If you sign this agreement, you may be:

Giving up your right to be supported by the person you are marrying or to whom you are married.

Giving up your right to ownership or control of money and property.

Agreeing to pay bills and debts of the person you are marrying or to whom you are married.

Giving up your right to money and property if your marriage ends or the person to whom you are married dies.

Giving up your right to have your legal fees paid.

(d) Adequate financial disclosure under this section requires that:

(1) the party received a reasonably accurate description and good faith estimate of value of the property, liabilities, and income of the other party;

(2) the party expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(3) the party had adequate knowledge or a reasonable basis for having adequate knowledge of the information required to be disclosed in subsection (d)(1).

(e) If a premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, on request of that party, may require the other party to provide support to the extent necessary to avoid that eligibility.

(f) A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the context of the agreement taken as a whole[:]

[(1)] the term was unconscionable at the time of signing [; or

(2) enforcement of the term would result in substantial hardship for a party

because of a material change in circumstances arising since the agreement was signed].

(g) The court shall decide a question of unconscionability [or substantial hardship] under subsection (f) as a matter of law.

Legislative Note 1: *Section 9(a) places the burden of proof on the party challenging a premarital agreement or a marital agreement. Amendments are required if your state wants to (1) differentiate between the two categories of agreement and place the burden of proof on a party seeking to enforce a marital agreement, or (2) place the burden of proof on a party seeking to enforce either a premarital agreement or marital agreement.*

Legislative Note 2: *If your state wants to permit review for “substantial hardship” caused by a premarital agreement or marital agreement at the time of enforcement, Section 9(f), including the bracketed language, should be enacted.*

SECTION 10. UNENFORCEABLE TERMS.

(a) In this section, “custodial responsibility” includes physical or legal custody, parenting time, access, visitation, or other custodial right or duty with respect to a child.

(b) A term in a premarital or marital agreement is not enforceable to the extent that it:

(1) adversely affects a child’s right to support;

(2) limits or restricts a remedy available to a victim of domestic violence under law of this state other than this [act];

(3) purports to modify the grounds for a court-decreed separation or marital dissolution available under law of this state other than this [act]; or

(4) penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.

(c) A term in a premarital agreement or marital agreement that defines the rights or duties of the parties regarding custodial responsibility is not binding on a court.

Legislative Note: A state may vary the terminology of “custodial responsibility” to reflect the terminology used in state law other than this act.

SECTION 11. LIMITATION OF ACTION. A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement or marital agreement is tolled during the marriage of the parties to the agreement, but equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

[SECTION 14. REPEALS. The following are repealed:

- (1) [Uniform Premarital Agreement Act]
- (2) [Uniform Probate Code Section 2-213() (Waiver of Right to Elect and of Other Rights)]
- (3)
- (4)
- (5)

SECTION 15. EFFECTIVE DATE. This [act] takes effect