

Uniform Premarital and Marital Agreements Act

This act describes the formation of premarital and marital agreements, when such agreements are effective, provisions that are unenforceable in premarital or marital agreements, and when an agreement is enforceable. Under the act, provisions relating to spousal maintenance are unenforceable if the provisions are unconscionable at the time of enforcement. The Uniform Premarital and Marital Agreements Act addresses the varying standards for these types of agreements that have led to conflicting laws, judgments, and uncertainty about enforcement as couples move from state to state.

Submitted as:

[HB 1204](#)

Colorado

Status: Signed into law on May 17, 2013.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Uniform Premarital and Marital Agreements Act.
2
- 3 Section 2. [*Definitions.*] In this section:
4 (1) “Amendment” means a modification or revocation of a premarital agreement or marital
5 agreement.
6 (2) “Marital agreement” means an agreement between spouses who intend to remain married
7 which affirms, modifies, or waives a marital right or obligation during the marriage or at
8 legal separation, marital dissolution, death of one of the spouses, or the occurrence or
9 nonoccurrence of any other event. The term includes an amendment, signed after the spouses
10 marry, of a premarital agreement or marital agreement.
11 (3) “Marital dissolution” means the ending of a marriage by court decree. The term includes a
12 divorce, dissolution, and annulment.
13 (4) “Marital right or obligation” means any of the following rights or obligations arising between
14 spouses because of their marital status:
15 (A) spousal maintenance;
16 (B) a right to property, including characterization, management, and ownership;
17 (C) responsibility for a liability;
18 (D) a right to property and responsibility for liabilities at legal separation, marital
19 dissolution, or death of a spouse; or
20 (E) an award and allocation of attorney’s fees and costs.
21 (5) “Premarital agreement” means an agreement between individuals who intend to marry which
22 affirms, modifies, or waives a marital right or obligation during the marriage or at legal
23 separation, marital dissolution, death of one of the spouses, or the occurrence or
24 nonoccurrence of any other event. The term includes an amendment, signed before the
25 individuals marry, of a premarital agreement.

- 1 (6) “Property” means anything that may be the subject of ownership, whether real or personal,
2 tangible or intangible, legal or equitable, or any interest therein, including income and
3 earnings.
- 4 (7) “Record” means information that is inscribed on a tangible medium or that is stored in an
5 electronic or other medium and is retrievable in perceivable form.
- 6 (8) “Sign” means with present intent to authenticate or adopt a record:
7 (A) to execute or adopt a tangible symbol; or
8 (B) to attach to or logically associate with the record an electronic symbol, sound, or process.
- 9 (9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United
10 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
11 United States.

12
13 Section 3. [*Scope.*]

- 14 (1) This [Act] applies to a premarital agreement or marital agreement signed on or after [the
15 effective date of this [Act]].
- 16 (2) This [Act] does not affect any right, obligation, or liability arising under a premarital
17 agreement or marital agreement signed before [the effective date of this [Act]].
- 18 (3) This [Act] does not apply to:
19 (a) an agreement between spouses which affirms, modifies, or waives a marital right or
20 obligation and requires court approval to become effective; or
21 (b) an agreement between spouses who intend to obtain a marital dissolution or court-
22 decreed legal separation which resolves their marital rights or obligations and is signed
23 when a proceeding for marital dissolution or court-decreed legal separation is anticipated
24 or pending.
- 25 (4) This [Act] does not affect adversely the rights of a bona fide purchaser for value to the extent
26 that this [Act] applies to a waiver of a marital right or obligation in a transfer or conveyance
27 of property by a spouse to a third party.

28
29 Section 4. [*Governing law.*]

- 30 (1) The validity, enforceability, interpretation, and construction of a premarital agreement or
31 marital agreement are determined:
32 (a) by the law of the jurisdiction designated in the agreement if the jurisdiction has a
33 significant relationship to the agreement or either party at the time the agreement was
34 signed and the designated law is not contrary to Section 9 or to a fundamental public
35 policy of this state; or
36 (b) absent an effective designation described in paragraph (a) of this subsection (1), by the
37 law of this state, including the choice-of-law rules of this state.

38
39 Section 5. [*Principles of law and equity.*]

40 Unless displaced by a provision of this [Act], principles of law and equity supplement this [Act].

41
42 Section 6. [*Formation requirements.*]

43 A premarital agreement or marital agreement must be in a record and signed by both parties. The
44 agreement is enforceable without consideration.

1 Section 7. [*When agreement effective.*]

2 A premarital agreement is effective on marriage. A marital agreement is effective on signing by
3 both parties.

4
5 Section 8. [*Void marriage.*]

6 If a marriage is determined to be void, a premarital agreement or marital agreement is
7 enforceable to the extent necessary to avoid an inequitable result.

8
9 Section 9. [*Enforcement.*]

10 (1) A premarital agreement or marital agreement is unenforceable if a party against whom
11 enforcement is sought proves:

- 12 (a) the party's consent to the agreement was involuntary or the result of duress;
13 (b) the party did not have access to independent legal representation under subsection (2) of
14 this section;
15 (c) unless the party had independent legal representation at the time the agreement was
16 signed, the agreement did not include a notice of waiver of rights under subsection (3) of
17 this section or an explanation in plain language of the marital rights or obligations being
18 modified or waived by the agreement; or
19 (d) before signing the agreement, the party did not receive adequate financial disclosure
20 under subsection (4) of this section.

21 (2) A party has access to independent legal representation if:

- 22 (a) before signing a premarital or marital agreement, the party has a reasonable time to:
23 (I) decide whether to retain a lawyer to provide independent legal representation; and
24 (II) locate a lawyer to provide independent legal representation, obtain the lawyer's
25 advice, and consider the advice provided; and
26 (b) the other party is represented by a lawyer and the party has the financial ability to retain a
27 lawyer or the other party agrees to pay the reasonable fees and expenses of independent
28 legal representation.

29 (3) A notice of waiver of rights under this section requires language, conspicuously displayed,
30 substantially similar to the following, as applicable to the premarital agreement or marital
31 agreement:

32
33 If you sign this agreement, you may be:

34
35 Giving up your right to be supported by the person you are marrying or to whom you are
36 married.

37
38 Giving up your right to ownership or control of money and property.

39
40 Agreeing to pay bills and debts of the person you are marrying or to whom you are
41 married.

42
43 Giving up your right to money and property if your marriage ends or the person to whom
44 you are married dies.

45
46 Giving up your right to have your legal fees paid.

- 1 (4) A party has adequate financial disclosure under this section if the party:
2 (a) receives a reasonably accurate description and good-faith estimate of value of the
3 property, liabilities, and income of the other party; or
4 (b) has adequate knowledge or a reasonable basis for having adequate knowledge of the
5 information described in paragraph (a) of this subsection (4).
6 (5) A marital agreement or amendment thereto or revocation thereof that is otherwise
7 enforceable after applying the provisions of subsections (1) to (4) of this section is
8 nevertheless unenforceable insofar, but only insofar, as the provisions of such agreement,
9 amendment, or revocation relate to the determination, modification, limitation, or elimination
10 of spousal maintenance or the waiver or allocation of attorney fees, and such provisions are
11 unconscionable at the time of enforcement of such provisions. The issue of unconscionability
12 shall be decided by the court as a matter of law.
13 (6) A premarital or marital agreement, or an amendment of either, that is not in a record and
14 signed by both parties is unenforceable.
15

16 Section 10 [*Unenforceable terms.*]

- 17 (1) In this section, “custodial responsibility” means parental rights and responsibilities, parenting
18 time, access, visitation, or other custodial right or duty with respect to a child.
19 (2) A term in a premarital agreement or marital agreement is not enforceable to the extent that it:
20 (a) Adversely affects a child’s right to support;
21 (b) Limits or restricts a remedy available to a victim of domestic violence under law of this
22 state other than this [act];
23 (c) Purports to modify the grounds for a court-decreed legal separation or marital dissolution
24 available under law of this state other than this [act];
25 (d) Penalizes a party for initiating a legal proceeding leading to a court-decreed legal
26 separation or marital dissolution; or
27 (e) Violates public policy
28 (3) A term in a premarital agreement or marital agreement which defines the rights or duties of
29 the parties regarding custodial responsibility is not binding on the court.
30

31 Section 11. [*Limitation of action.*]

32 A statute of limitations applicable to an action asserting a claim for relief under a premarital
33 agreement or marital agreement is tolled during the marriage of the parties to the agreement, but
34 equitable defenses limiting the time for enforcement, including laches and estoppel, are available
35 to either party.
36

37 Section 12. [*Uniformity of application and construction.*] In applying and construing this
38 uniform act, consideration must be given to the need to promote uniformity of the law with
39 respect to its subject matter among states that enact it.
40

41 Section 13. [*Relation to electronic signatures in global and national commerce act.*]

42 This [Act] modifies, limits, or supersedes the Federal “Electronic Signatures in Global and
43 National Commerce Act,” 15 U.S.C. Section 7001 et seq., but does not modify, limit, or
44 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery
45 of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

1 Section 14. [*Applicability of part and case law to agreements relating to civil unions.*]
2 Prospective parties to a civil union and present parties to a civil union may contract to make an
3 agreement relating to the civil union that includes any of the rights and obligations that may be
4 included in a marital agreement pursuant to this [Act]. The provisions of this [Act] and any case
5 law construing this article PART 3 apply to any agreement made by prospective parties to a civil
6 union or between present parties to a civil union.

7
8 Section 15. [*Waiver of right to elect and of other rights.*]
9 Any affirmation, modification, or waiver of a marital right or obligation, as defined in section 2
10 made on or after [Insert effective date] is unenforceable unless the affirmation, modification, or
11 waiver is contained in a premarital or marital agreement, as defined in section 2, that is
12 enforceable under [Insert citation.]

13
14 Section 16. [*Severability.*] Insert severability clause.

15
16 Section 17. [*Repealer.*] Insert repealer clause.

17
18 Section 18. [*Effective Date.*] Insert effective date.