

Comment, From Love to Law: The Evolution of Prenuptial Agreements Through History

Introduction

Prenuptial agreements, once viewed by courts as undermining the sanctity of marriage, have become a recognized tool for couples to define financial rights and obligations. This shift reflects broader societal changes in marriage and beliefs about individual autonomy and the legal community's efforts to establish enforceable yet equitable frameworks for these agreements. A prenup is a premarital agreement which is a legally binding contract that couples sign before getting married. Prenups have existed since at least the sixteenth century to alter the legal regimes for marital property and management.¹ The English Statute of Frauds requires that prenups be in writing to be enforceable.² As prenups have become more commonplace, they have also become more flexible and customizable to individual relationships.³

Before the Uniform Premarital Agreement Act (UPAA), prenups mostly protected the interests of the more propertied partner.⁴ Prenups were typically not taken seriously until the UPAA.⁵ States have adopted the UPAA to help prenups be more enforceable.⁶ Twenty-seven states have adopted the Uniform Premarital Agreement Act (UPAA), but with specific variations.⁷ These

¹ LESLIE J. HARRIS ET AL., FAMILY LAW 624 (6th ed. 2023).

² SHARON THOMPSON, PRENUPTIAL AGREEMENTS AND THE PRESUMPTION OF FREE CHOICE 200 (2015).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ "The Uniform Premarital Agreement Act (UPAA) has been adopted in 27 states." Linda J. Ravdin, *Postmarital Conduct Affecting Validity of Premarital Agreements*, PRAC. LAW., Aug. 2024, at 17.

⁷ Jenna Christine Colucci, Note, *The "P" Word: Ohio Should Adopt the Uniform Premarital Agreements Act to Achieve Consistency and Uniformity in the Treatment of Prenuptial Agreements*, 66 CLEV. ST. L. REV. 215, 241 (2017).

variations can include standards, flexibility, and other aspects.⁸ Since headlines about prenups are usually associated with celebrities, people may assume prenups are just for the rich and powerful.⁹ But marriage laws seek to protect the most-propriety partner.¹⁰ As prenups have become more common two groups of people are likely to get a prenup.¹¹ Those who are educated and have high incomes.¹² These couples typically have accumulated assets before marriage.¹³ The other group likely to get a prenup are people getting married for a second time.¹⁴ They do this to protect the assets from the first marriage.¹⁵ To be valid, prenups have to pass the usual contract requirements.¹⁶ They must be voluntary, with consideration, and satisfy the statute of frauds, and, some states have more requirements that need to be satisfied for a prenup to be valid.¹⁷ There are three approaches to considering the enforceability of contracts.¹⁸ There is the Uniform Premarital Agreement Act (UPAA) approach, the American Law Institute (ALI) approach, and the Uniform Premarital and Marital Agreement Act (UPMAA) approach.¹⁹ Part I of this Comment consider the UPAA approach, Part II considers the ALI approach, and Part III considers the UPMAA approach.

I. The Uniform Premarital Agreement Act (UPAA) Approach

In 1983, there was recognition of a need for uniform standards when determining the enforceability of premarital agreements.²⁰

⁸ *Id.*

⁹ Allison A. Marston, *Planning for Love: The Politics of Prenuptial Agreements*, 49 STAN. L. REV. 887, 898 (1997).

¹⁰ Gail Frommer Brod, *Premarital Agreements and Gender Justice*, 6 YALE J.L. & FEMINISM 229, 234 (1994).

¹¹ Marston, *supra* note 9, at 898.

¹² *Id.* at 892.

¹³ *Id.* at 896.

¹⁴ *Id.* at 895.

¹⁵ *Id.*

¹⁶ *Id.* at 898.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ HARRIS ET AL., *supra* note 1, at 624.

²⁰ See Elizabeth Barker Brandt, *The Uniform Premarital Agreements Act and the Reality of Premarital Agreements in Idaho*, 33 IDAHO L. REV. 539, 540-41 (1997). See generally UNIF. PREMARITAL AGREEMENT ACT § 9 (UNIF. LAW COMM'N 1983).

The Uniform Premarital Agreement Act sought to establish a standardized framework for the creation, interpretation, and enforcement of prenuptial agreements across jurisdictions.²¹ The core principles of this approach are voluntariness, financial disclosure, and fairness. The Act aimed to balance individual autonomy with public policy concerns about equity and justice.²² This problem came from the recognition that couples can live in multiple states throughout their marriage.²³ The lack of a uniform standard can leave couples with an unenforceable and invalid agreement upon relocation.²⁴ The Uniform Premarital Agreement Act takes the position that the parties should reach the agreement they want and should be able to rely on the enforceability at separation or divorce.²⁵ This sought to ensure that premarital agreements that are properly executed in one state would still be binding and valid in another state.²⁶ Under the UPAA a premarital agreement is not enforceable if the party against whom enforcement is sought proves that either (1) they did not voluntarily execute the agreement or (2) the agreement was unconscionable at the time of the execution and they did not receive adequate financial disclosure.²⁷ To do this the party has to show they (1) were not provided a “fair and reasonable disclosure” of the other party’s assets and financial

²¹ See *Why States Should Adopt UPAA*, UNIF. L. COMM’N, <http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UPAA> (last visited Nov. 15, 2024).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Jorge E. Salazar, *More Than Just Paper: The Rising Popularity of Premarital Agreements*, 66 *ADVOCATE* 32, 34 (Dec. 2023).

²⁷ As stated in the UPAA:

A premarital agreement is not enforceable if the party against whom enforcement is sought proves that: (1) that party did not execute the agreement voluntarily; or (2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and (iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

UNIF. PREMARITAL AGREEMENT ACT § 6(a) (UNIF. LAW COMM’N 1983).

obligations; (2) did not “voluntarily and expressly waive, in writing any right to disclosure” of the other party’s assets or financial obligations, (3) “did not have, or reasonably could not have had, an adequate knowledge” of the other party’s assets or financial obligations.²⁸ The other party can disprove that a disclosure was not made.²⁹ This approach does not require a substantive review of the agreement. In other words, the UPAA is willing to enforce an unconscionable agreement as long as the parties disclose and satisfy all the requirements when it comes to disclosing properly.³⁰ There is an exception to the lack of substantive review, if there is an alimony provision.³¹ This approach will examine a premarital agreement to determine at the time of enforcement whether the terms of the agreement modify or eliminate alimony.³² Under the UPAA, the provisions that eliminate or modify alimony would be invalid if they cause one party to be eligible for public assistance.³³ There are courts that will at least consider the advice of counsel a factor in establishing if there was no fraud or duress.³⁴

By focusing on voluntariness and disclosure, the UPAA places a burden on the disadvantaged party to challenge the agreement after its execution. Arguably, this framework disproportionately favors wealthier and more legally sophisticated parties who may exploit their position to enforce terms that leave the disadvantaged party vulnerable. An example of this would be

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² As stated in the UPAA:

If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one 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, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

See UNIF. PREMARITAL AGREEMENT ACT § 6(b) (UNIF. LAW COMM’N 1983).

³³ *Id.*

³⁴ See, e.g., *Owen v. Owen*, 759 S.E.2d 468, 472 (W. Va. 2014) (“although advice of independent counsel at the time parties enter into a prenuptial agreement helps demonstrate that there has been no fraud, duress or misrepresentation, and that the agreement was entered into knowledgeably and voluntarily, such independent advice of counsel is not a prerequisite to enforceability”).

the lack of mandatory requirements for independent legal counsel. The UPAA is also criticized because it is silent on substantial fairness at the time of enforcement. This approach was drafted in 1983, and it did not anticipate the complexities of modern relationships. Examples might include agreements that could become inequitable over time due to unforeseen changes such as the birth of children or significant career changes made by one spouse. The act is also silent on assets such as intellectual property and cryptocurrency, which leaves courts to look for terms outside the Act.

II. The American Law Institute (ALI) Approach

Before the American Law Institute (ALI) approach, there were public policy concerns regarding the enforcement of prenuptial agreements. Factors such as rising divorce rates, changes in gender roles, and increased individual financial independence led to a greater acceptance of prenuptial agreements.³⁵ The American Law Institute has played a significant role in finding an enforceable yet equitable way for couples to define financial rights and obligations. The ALI approach was introduced in 2002 through its *Principles of the Law of Family Dissolution*.³⁶ The standards aim to address procedural fairness, transparency, and substantive equity in prenuptial agreements.³⁷ This approach has three main principles and recommendations. The first principle is procedural fairness.³⁸ To achieve this, there has to be a full disclosure of financial information. ALI recommends that there be independent legal counsel to ensure that there was informed consent.³⁹ The second principle is

³⁵ Angela Marie Caulley, *Policing the Prenup: When Love at First Sight Deserves a Second Look*, 55 AM. J. FAM. L. 123 (2023).

³⁶ AM. LAW INST. (ALI), *PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION ANALYSIS AND RECOMMENDATIONS* (2002), § 7.02 cmt. a.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* § 7.04(3)(c). Section 7.04(3)(c) provides:

In the case of agreements concluded without the assistance of independent legal counsel for each party, the agreement states, in language easily understandable by an adult of ordinary intelligence with no legal training, (i) the nature of any rights or claims otherwise arising at dissolution that are altered by the contract, and the nature of that alteration, and independent counsel,

substantive fairness, which focuses on whether agreements are unconscionable or create severe inequalities.⁴⁰ This approach recommends that there be judicial review to balance freedom of contract with public policy.⁴¹ The third principle is the timing of execution and the voluntariness of the parties when agreeing. The ALI approach has guidelines to mitigate those concerns.⁴²

A starting point in this approach is that the agreement must be in writing and signed by both parties to be enforceable.⁴³ The agreement must be signed voluntarily.⁴⁴ This means that the agreement was signed with consent and the parties were not under duress.⁴⁵ A party can show that the agreement was not signed voluntarily if it demonstrates: (1) the parties signed the agreement thirty days or fewer before marriage, (2) the parties were not advised to seek legal advice, and (3) the parties did not have a “reasonable” amount of time to seek legal advice.⁴⁶ If neither party sought out independent legal advice then they have to disclose in the agreement that the agreement may be altered at the time of divorce.⁴⁷ The party who seeks the enforcement of the clause must show that they disclosed all their financial assets and they provided a safe-harbor

(ii) that the interests of the spouses with respect to the agreement may be adverse.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* § 7.04(5). Section 7.04(5) provides:

To enforce terms that limit claims the other party would otherwise have to compensatory payments, or to share in marital property, a party must show that prior to the agreement’s execution the other party knew, at least approximately, the moving party’s assets and income, or was provided by the moving party with a written statement containing that information. The general standard set forth in the preceding sentence is always satisfied by a showing -prior to signing the agreement - that the party seeking to enforce it provided the other party with a written statement accurately listing (i) his or her significant assets, and their total approximate market value; (ii) his or her approximate annual income for each of the preceding three years; and (iii) any significant future acquisitions, or changes in income, to which the party has a current legal entitlement, or which the party reasonably expects to realize within three years of the agreement’s execution.

⁴³ *Id.* § 7.04(1).

⁴⁴ *Id.* § 7.04(2).

⁴⁵ *Id.*

⁴⁶ *Id.* § 7.04(3).

⁴⁷ *Id.* § 7.04(3)(b).

clause detailing income and assets.⁴⁸ The ALI approach has three triggers that would allow a court to engage in a substantive review of the agreement. The three triggers are: (1) a certain amount of time has passed (this approach suggests at least ten years), (2) the parties did not have any children at the time the prenuptial agreement was executed, or the parties adopted a child or had a child while married, and (3) the parties experienced a “substantial change in circumstances” that they could not have anticipated at the time of signing.⁴⁹ The ALI approach places greater weight on the fairness of the result at the time of enforcement even if it makes the result less predictable.⁵⁰ A court under this approach would not enforce an agreement if enforcement would create a “substantial injustice.”⁵¹ In determining if there is a substantial injustice, a court would focus on what the party’s position would be if the agreement were enforced versus what the outcome would be if state law governed.⁵²

III. The Uniform Premarital Agreement Act (UPMAA) Approach

The Uniform Premarital Marital Agreement Act adopted in 2012 takes a middle-ground relative to the UPPA and ALI approaches; it considers common law and is rooted in contract doctrine. The UPMAA approach also stemmed from the concern that there is no uniformity in the enforcement of prenuptial agreements.⁵³ This approach also recognizes that problems arise as couples move to different states.⁵⁴ The goals of the UPMAA are ensuring consistency among states that adopt it, protecting both

⁴⁸ *Id.*

⁴⁹ *Id.* § 7.05(2)(c) (“There has been a change in circumstances that has a substantial impact on the parties or their children, but when they executed the agreement the parties probably did not anticipate either the change or its impact.”).

⁵⁰ Barbara A. Atwood & Brian H. Bix, *A New Uniform Law for Premarital and Marital Agreements*, 46 FAM. L.Q. 313, 330 (2012).

⁵¹ See ALI Principles, *supra* note 36, § 7.05(3).

⁵² *Id.*

⁵³ See *Premarital and Marital Agreements Act*, UNIF. L. COMMISSION, <http://www.uniformlaws.org/Act.aspx?title=Premarital%20and%20Marital%20Agreements%20Act> (last visited Nov. 17, 2024).

⁵⁴ *Id.*

parties from coercion or unfair agreements, encouraging clarity and precision in drafting agreements, and addressing the changes in societal attitudes towards marriage and divorce since the 1980s.⁵⁵ Unlike the UPA, the UPMAA addresses both prenuptial and postnuptial agreements and reflects understanding that both of these types of contracts are increasingly used.⁵⁶ The agreement must be in writing and signed by both parties.⁵⁷ Execution must be voluntary.⁵⁸ This approach is explicit in forbidding agreements that were made under duress, coercion, or undue influence.⁵⁹ No additional consideration is required beyond the act of marriage itself. Both parties must provide a “fair and reasonable” disclosure of assets, liabilities, and income unless expressly waived. Inadequate disclosure is a key factor in invalidating agreements.⁶⁰ The UPMAA uses a two-pronged approach when addressing whether there was unconscionability. It asks whether the agreement was unconscionable when executed and whether the terms would be unfairly one-sided at the time of enforcement due to unforeseen circumstances.⁶¹ This ensures that agreements remain reasonable and fair over time.⁶² Provisions related to spousal support can be unenforceable if they leave one party destitute or dependent on public assistance.⁶³ Agreements affecting child support or custody are prohibited, purposely leaving it up to the courts to protect the best interests of the child.⁶⁴

Under this approach an agreement is unenforceable if the party against whom enforcement is sought proves: (1) the party

⁵⁵ *Id.*

⁵⁶ Compare UNIF. PREMARITAL AGREEMENT ACT § 6 (UNIF. LAW COMM’N 1983), with UNIF. PREMARITAL AND MARITAL AGREEMENTS ACT § 9 (UNIF. LAW COMM’N 2012).

⁵⁷ UNIF. PREMARITAL AND MARITAL AGREEMENTS ACT § 9(a)(1) (UNIF. LAW COMM’N 2012).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* § 9(a)(4).

⁶¹ Terry Care, *Why States Should Adopt SB 247: Uniform Premarital and Marital Agreement Act*, at 1, <https://www.leg.state.nv.us/App/NELIS/REL/77th2013/ExhibitDocument/OpenExhibitDocument?exhibitId=4237&file-DownloadName=Why%20States%20Should%20Adopt-Terry%20Care-SB%20247.pdf> (last visited Nov. 17, 2024).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

did not voluntarily sign or consent was given under duress, (2) the party did not have access to independent counsel, (3) if the party did not have access to legal counsel, the agreement did not include a notice of waiver of rights or a plain language explanation of the rights and/or if obligations are being waived or modified, or (4) the party did not receive adequate disclosure of the other party's finances or assets.⁶⁵ A court can refuse to enforce a term of a premarital agreement if the party against whom enforcement is sought proves either that the term was unconscionable when the agreement was signed or the enforcement of the term would result in a "substantial hardship" for a party due to a "material change in circumstances arising after the agreement was signed."⁶⁶

By creating a consistent standard, this approach reduces the likelihood of different rulings in different states. The detailed requirements for voluntariness, disclosure, and unconscionability make the drafting process more transparent. This act addresses unforeseen changes which allows the courts to assess fairness both at the time of execution and enforcement. Although the UPMAA has strengths, there are still some aspects to it that have been criticized. Not all states have adopted this approach leading to continued inconsistency.⁶⁷ Critics argue that the safeguards in this approach are still not enough to protect vulnerable parties from being exploited.⁶⁸ Others argue that the unconscionability provision gives judges too much latitude which undermines contractual certainty.⁶⁹

IV. State Approaches to Prenuptial Agreements

States have chosen how they approach prenuptial agreements. There are some similarities and differences as to how these states have approached prenuptial agreements. The following are the approaches some states have taken.

⁶⁵ UNIF. PREMARITAL AND MARITAL AGREEMENTS ACT § 9(a)(1) (UNIF. LAW COMM'N 2012).

⁶⁶ Unif. Premarital and Marital Agreements Act § 9(f)(2) (Unif. Law Comm'n 2012).

⁶⁷ See generally ALI Principles, *supra* note 36, § 7.05; UNIF. PREMARITAL AGREEMENT ACT § 6 (UNIF. LAW COMM'N 1983); UNIF. PREMARITAL AND MARITAL AGREEMENTS ACT § 9 (UNIF. LAW COMM'N 2012).

⁶⁸ Brandt, *supra* note 20.

⁶⁹ *Id.*

District of Columbia

The statute that governs prenuptial agreements in the District of Columbia is D.C. Code § 46-401. Prenups are allowed for domestic partners.⁷⁰ This means that same-sex or opposite-sex couples are allowed to get a prenup. In the District of Columbia, prenuptial agreements are legal contracts created to outline how assets, debt, and other financial matters will be handled in the case of divorce, separation, or death. They are enforceable if certain requirements are met. The agreements must be voluntary.⁷¹ Both parties must agree voluntarily, without any coercion or duress.⁷² There must be full disclosure.⁷³ Both parties must provide fair and reasonable disclosure of their assets, liabilities, and other financial circumstances.⁷⁴ The terms have to be fair and reasonable at the time it is signed and not deemed unconscionable. This means the agreement cannot be extremely unfair or one-sided. A prenuptial agreement must be in writing and signed by both parties. Oral agreements are not enforceable. While legal counsel is not required, it is highly recommended that both parties seek independent legal counsel to ensure that they understand the agreement and are giving informed consent. If one party does not have legal representation, it could affect whether an agreement is enforced or not.

Prenuptial agreements are generally enforceable in the District of Columbia unless they contain provisions that are illegal or against public policy. These provisions could be waiving child support or violating other protected provisions.⁷⁵ If the terms of the agreement are disputed, a court will review the agreement to see if it is fair, voluntary, and based on full financial disclosure. A prenuptial agreement could address property division (how assets and debts will be divided in case of divorce), alimony (whether one spouse will receive spousal support and if so, how much), estate planning (how assets will be handled after death), debts (who will be responsible for debts acquired before or during the marriage).⁷⁶ A prenuptial agreement can be modified or revoked

⁷⁰ D.C. CODE § 46-401 (Supp. 2023).

⁷¹ D.C. CODE § 46-502 (1996).

⁷² *Id.*

⁷³ *Id.* § 46-506.

⁷⁴ *Id.*

⁷⁵ *Id.* § 46-502.

⁷⁶ *Id.*

after marriage through a written agreement signed by both parties.⁷⁷ Postnuptial agreements are also enforceable in the District of Columbia with the same requirements for disclosure, fairness, and voluntary consent.⁷⁸

Arizona

Prenuptial agreements are governed by the Arizona Uniform Premarital Agreement Act (UPAA). It is codified in the Arizona Revised Statutes §§ 25-201 to 25-205. The agreement must be voluntary.⁷⁹ Both parties must enter the agreement willingly, without coercion, undue influence, or duress.⁸⁰ If there is evidence of pressure to sign the agreement then there is a possibility the agreement could be found unenforceable.⁸¹ The agreement must be written and signed by both parties.⁸² Under Arizona law, verbal agreements are not enforceable.⁸³ There must be full disclosure.⁸⁴ Before the agreement is signed, both parties must fully disclose their financial situation, including assets, debts, and income.⁸⁵ If relevant information is not disclosed, then the agreement can be found to be invalid.⁸⁶ The agreement must be fair and reasonable at the time of signing the agreement.⁸⁷ An agreement can favor one party but it cannot be so one-sided that it would be found unconscionable.⁸⁸ Legal counsel is not required. If the legal conditions are not met then a court may declare an agreement partially or wholly unenforceable. Arizona is a community property state.⁸⁹ This means that assets and debts acquired during the marriage are generally considered jointly owned.⁹⁰ This can be overridden by a

⁷⁷ *Id.*

⁷⁸ *Id.* § 46–505.

⁷⁹ ARIZ. REV. STAT. ANN. § 25-201 (2024).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* § 25-202.

⁸⁴ *Id.* § 25-201.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ ARIZ. REV. STAT. ANN. § 25-211 (2024).

⁹⁰ *Id.*

prenuptial agreement if couples decide to depart from the default rule and address how property and finances are handled.

The prenuptial agreements can address the division of property (specify how property is to be divided in the event of divorce or separation), spousal maintenance (also known as alimony—whether one party will pay spousal support and if so the amount and duration), debts (determine responsibility for debts incurred before and after marriage), business interests (protection of business ownership brought into a marriage), and estate planning (define inheritance rights and other estate planning matters).⁹¹ There are some limitations in Arizona of what can be included in a prenuptial agreement. A prenuptial agreement cannot decide matters related to child support or custody.⁹² These issues will be determined by a court based on the children's interests at the time of separation or divorce.⁹³ If the agreement is found to be excessively unfair or was signed under unfair circumstances (such as incomplete disclosure), a court could refuse to enforce it.⁹⁴ A prenuptial agreement can be modified or revoked after marriage if both parties agree in writing.⁹⁵

Arkansas

In Arkansas, prenuptial agreements are legally governed by the Uniform Premarital Agreement Act (UPAA). It is codified in Arkansas Code Annotated §§ 9-11-401 to 9-11-409. Both parties must agree willingly.⁹⁶ Coercion, undue influence, or duress could invalidate the agreement.⁹⁷ The prenuptial agreement must be in writing and signed by both parties.⁹⁸ Verbal agreements are not enforceable. Both parties must provide a fair and full disclosure of their financial circumstances, including assets, debts, and income.⁹⁹ If one party withholds financial information, the agreement could

⁹¹ *Id.* § 25-203.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* § 25-204.

⁹⁶ ARK. CODE ANN. § 9-11-402 (2023).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* § 9-11-406.

be invalidated.¹⁰⁰ The agreement must not be unconscionable, meaning it cannot be grossly unfair at the signing or at enforcement.¹⁰¹ A court may scrutinize the terms to make sure they are not excessively one-sided.¹⁰²

The prenuptial agreement can cover division of property (cover how assets and debts will be divided in the event of divorce or separation), spousal support (also known as alimony; whether one spouse will pay spousal maintenance, and if so, how much), debt responsibility (allocation of debts incurred before or during the marriage), business interests (protection of business assets or interests owned before the marriage), estate planning (designation of inheritance rights or exclusions).¹⁰³ There are limitations to what can be included in a prenuptial agreement in Arkansas. One of the limitations is child support and custody.¹⁰⁴ A prenuptial agreement cannot address or limit child support, custody, or visitation rights. A court determines these matters based on the best interest of the child. Another limitation is illegal or unconscionable terms.¹⁰⁵ Provisions that are illegal or heavily unfair may render the prenuptial agreement unenforceable.¹⁰⁶ Arkansas is an equitable distribution state, meaning that in the absence of a prenuptial agreement, marital assets are divided fairly but not necessarily equally in the event of a divorce.¹⁰⁷ In Arkansas, a prenuptial agreement can be modified or revoked if both parties agree to it in writing.¹⁰⁸

California

In California, prenuptial agreements are governed by the California Uniform Premarital Agreement Act (UPAA), codified in California Family Code §§ 1610-1617. Both parties must sign the agreement willingly.¹⁰⁹ Any evidence of coercion, undue influence,

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* § 9-11-403.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* § 9-11-402.

¹⁰⁸ *Id.* § 9-11-405.

¹⁰⁹ CAL. FAM. CODE § 1611 (2023).

or duress can make the agreement invalid.¹¹⁰ Both parties must provide full and fair disclosure of their financial circumstances, including assets, debts, income, and liabilities before signing the agreement.¹¹¹ California requires that both parties have access to independent legal counsel or explicitly waive this right in writing.¹¹² If one party does not have legal representation, they must be fully informed of the terms and voluntarily waive their right to an attorney.¹¹³ California requires at least seven days between the presentation of the prenuptial agreement and its signing to ensure neither party feels rushed or pressured.¹¹⁴ The terms of the agreement must be fair and not unconscionable at the time of enforcement.¹¹⁵ Courts will review the agreement to ensure that it does not disproportionately favor one party.¹¹⁶

A prenuptial agreement in California can address the division of property (how community and separate property will be divided in case of divorce or separation), spousal support (include terms about waiving or limiting spousal support), debt responsibility (clarify responsibility for debts acquired before or during the marriage), business interests (protect business assets or income generated during the marriage), estate planning (designate inheritance rights, trusts, or other estate planning considerations).¹¹⁷ A prenuptial agreement in California cannot dictate child support, custody, or visitation arrangements.¹¹⁸ These matters are determined by the court based on the child's best interests. Provisions that are excessively unfair or would leave one party financially destitute may be struck down by a court.¹¹⁹ Any terms that violate state or federal law are unenforceable.¹²⁰ A provision covering spousal support can be included in a prenuptial agreement but is subject to heavy scrutiny and may be invalidated if it is deemed unfair or one-sided

¹¹⁰ *Id.* § 1614.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* § 1612.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

at the time of enforcement.¹²¹ California is a community property state, which means that absent a prenuptial agreement assets and debts acquired during the marriage are typically divided upon divorce. A prenuptial agreement in California can be amended or revoked after marriage through a written agreement signed by both parties.¹²²

Colorado

Prenuptial agreements are governed by the Colorado Uniform Premarital and Marital Agreements Act, codified under the Colorado Revised Statutes § 14-2-301 to § 14-2-313. Both parties must agree voluntarily.¹²³ Evidence showing otherwise can make an agreement be deemed invalid.¹²⁴ Prenuptial agreements must be in writing and signed by both parties to be enforceable.¹²⁵ Under Colorado law, verbal agreements are not valid.¹²⁶ Both parties must provide fair and reasonable disclosure of their financial circumstances, including assets, liabilities, income, and debts.¹²⁷ Failure to disclose relevant financial information can render the agreement unenforceable. The terms of the agreement must be fair and reasonable.¹²⁸ A court may refuse to enforce a prenuptial agreement that is excessively one-sided or unconscionable.¹²⁹ The agreement must be executed before the wedding to avoid claims of undue pressure or lack of time to review.¹³⁰ A prenuptial agreement can address property division, spousal maintenance, debts, business interests, and estate planning. If there is a waiver of spousal maintenance, then the waiver cannot be unconscionable at the time of enforcement.¹³¹ A prenuptial agreement cannot have child-related matters, unfair or unconscionable terms, or public

¹²¹ *Id.*

¹²² CAL. FAM. CODE § 1614 (2023).

¹²³ COLO. REV. STAT. § 14-2-309 (2023).

¹²⁴ *Id.* § 14-2-306.

¹²⁵ *Id.* § 14-2-310.

¹²⁶ *Id.* § 14-2-309.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

policy violations.¹³² Public policy violations can include encouraging divorce or illegal activities.¹³³

Colorado is an equitable distribution state, meaning that if there is no prenuptial agreement, marital property is divided fairly but that may not necessarily be equally at divorce.¹³⁴ Separate property (property owned before the marriage, gifts, or inheritances) typically remains with its original owner, unless it has been commingled with marital assets.¹³⁵ A prenuptial agreement can provide clarity by defining how property will be classified and divided. A prenuptial agreement can be modified or revoked but any changes must be in writing, signed by both parties, and follow the same formalities as the original agreement.¹³⁶

Connecticut

In Connecticut prenuptial agreements are governed by the Connecticut Premarital Agreement Act, codified in the Connecticut General Statutes §§ 46b-36a to 46b-36j. The key requirements for prenuptial agreements are: both parties must sign the agreement willingly, they must be in writing and signed by both parties to be legally binding, there must full and fair disclosure of their financial circumstances, and the agreement must be reasonable and fair.¹³⁷ Prenuptial agreements can cover division of property, spousal support, debts, business interests, and estate planning.¹³⁸ For a prenuptial agreement to be enforceable, it must have been executed with adequate time for review and understanding.¹³⁹

Prenuptial agreements can be modified or revoked after marriage if both parties agree to it in writing.¹⁴⁰ Absent a prenuptial agreement, Connecticut follows the equitable distribution system

¹³² *Id.* § 14-2-310.

¹³³ *Id.*

¹³⁴ *Id.* § 14-2-302.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ CONN. GEN. STAT. § 46b-36a (1995).

¹³⁸ *Id.* § 46b-36d.

¹³⁹ *Id.* § 46b-36g.

¹⁴⁰ *Id.* § 46b-36f.

for dividing marital property after a divorce.¹⁴¹ Marital property will be divided fairly although not necessarily equal.¹⁴²

Delaware

In Delaware, prenuptial agreements are recognized and governed by general contract principles and Delaware Code Title 13, Chapter 1, Section 301. The key requirements are that both parties must agree voluntarily, the prenuptial agreement must be in writing and both parties must sign, and there has to be full and accurate financial disclosure and fair and reasonable terms.¹⁴³ A prenuptial agreement can cover the division of property, spousal support, debt allocation, business interests, and estate planning.¹⁴⁴ Although spousal support can be specified or waived, a court may scrutinize provisions that leave one party in financial hardship.¹⁴⁵ A prenup cannot include child support and custody, unfair or unconscionable terms (determined at the time of enforcement), or public policy violations.¹⁴⁶

The prenuptial agreements can be amended or revoked after marriage but any changes must be made in writing and signed by both parties.¹⁴⁷ Absent a prenuptial agreement, Delaware will follow the equitable distribution model for dividing property during a divorce.¹⁴⁸ Assets and debts are divided fairly although that may not be equally.

Florida

The Uniform Premarital Agreement Act (UPAA) approach is followed in Florida. It is codified in Florida Statutes §§ 61.079. These agreements allow engaged couples to establish rules about property division, spousal support, and financial responsibilities before the marriage.¹⁴⁹ The key requirements are that the parties

¹⁴¹ *Id.* § 46b-36.

¹⁴² *Id.*

¹⁴³ DEL. CODE ANN. tit. 13, § 322 (2023).

¹⁴⁴ *Id.* tit. 13, § 323.

¹⁴⁵ *Id.* tit. 13, § 326.

¹⁴⁶ *Id.* tit. 13, § 323.

¹⁴⁷ *Id.* tit. 13, § 325.

¹⁴⁸ *Id.* tit. 13, § 311.

¹⁴⁹ FLA. STAT. § 61.079(4)(a) (2018).

must agree voluntarily, the agreement must be written and signed by both parties, there must be a full financial disclosure, and the agreement must be fair and reasonable at the time of enforcement.¹⁵⁰ The parties are not required to seek independent legal counsel. A verbal agreement is not valid.¹⁵¹

A prenuptial agreement is not allowed to address child support or custody, have public policy violations, or contain unfair or unconscionable terms.¹⁵² Terms that are the result or coercion, fraud, or duress or that are excessively one-sided or would leave a party destitute may be struck down.¹⁵³ Florida is an equitable distribution state so marital property is divided fairly but not necessarily equally in case of a divorce without a prenuptial agreement.¹⁵⁴ Prenuptial agreements can be modified or revoked after marriage if both parties agree in writing.¹⁵⁵

Hawaii

In Hawaii, prenuptial agreements are governed by the Uniform Premarital Agreement Act, codified in Hawaii Revised Statutes § 572D-1 to § 572D-11. The key requirements for a prenuptial agreement include that it has to be entered into voluntarily, written, and signed by both parties, provide a full financial disclosure, and the terms have to be fair and reasonable.¹⁵⁶ Prenuptial agreements can cover the division of property, spousal support, debt allocation, business interests, and estate planning.¹⁵⁷

Prenuptial agreements cannot cover child support and custody.¹⁵⁸ These matters are decided by the court based on the child's best interests. The prenuptial agreement cannot include any provisions that are public policy violations.¹⁵⁹ Terms that are excessively one-sided or leave one party in severe financial hardship

¹⁵⁰ *Id.* § 61.079(7).

¹⁵¹ *Id.*

¹⁵² *Id.* § 61.079(4)(b).

¹⁵³ *Id.*

¹⁵⁴ FLA. STAT. § 61.077 (2018).

¹⁵⁵ *Id.* § 61.079(6).

¹⁵⁶ HAW. REV. STAT. § 572D-6 (2023).

¹⁵⁷ *Id.* § 572D-3.

¹⁵⁸ *Id.* § 572D-6.

¹⁵⁹ *Id.*

may not be enforced by a court.¹⁶⁰ In the absence of a prenuptial agreement, Hawaii is an equitable distribution state.¹⁶¹ This means that the court will divide assets fairly but not necessarily equally. Prenuptial agreements in Hawaii can be revoked or modified if both parties agree to it in writing.¹⁶²

Idaho

In Idaho, prenuptial agreements are governed by the Uniform Premarital Agreement Act (UPAA), codified in Idaho Code §§ 32-921 to 32-924. The essential requirements for a prenuptial agreement are voluntariness, the agreement must be in writing and signed by both parties, full financial disclosure, and fair and reasonable terms.¹⁶³ In Idaho, prenuptial agreements can cover the division of property, spousal support, debts, business interests, and inheritance rights.¹⁶⁴

Prenuptial agreements cannot contain provisions regarding child support, custody, or visitation rights. They also cannot contain unfair or unconscionable terms or terms that would violate public policy.¹⁶⁵ Courts could refuse to enforce a prenuptial agreement if it was signed under duress or coercion, significant financial information was withheld, or if the agreement's terms were grossly unfair at enforcement.¹⁶⁶ Idaho is a community property state, meaning that in the absence of a prenuptial agreement, marital assets and debts are generally divided equally during a divorce.¹⁶⁷ A prenuptial agreement can be modified or revoked if both parties agree to it in writing.¹⁶⁸

Illinois

Prenuptial agreements in Illinois are governed by the Illinois Uniform Premarital Agreement Act (IUPAA). This is codified in

¹⁶⁰ *Id.*

¹⁶¹ *Id.* § 580-12.

¹⁶² *Id.* § 572D-5.

¹⁶³ IDAHO CODE § 32-925 (1995).

¹⁶⁴ *Id.* § 32-923.

¹⁶⁵ *Id.* § 32-925.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* § 32-906.

¹⁶⁸ *Id.* IDAHO CODE § 32-924.

750 ILS 10/1 to 10/11. Prenuptial agreement have to be voluntary, written and signed by both parties, provide full financial disclosure, and fair and reasonable terms.¹⁶⁹ Prenuptial agreements can cover division of property, spousal support, debt allocation, business interests, and estate planning.¹⁷⁰

Child support and custody, public policy violations, and unfair or unconscionable terms cannot be included in a prenuptial agreement.¹⁷¹ A prenuptial agreement can be amended or revoked after marriage if both parties agree in writing.¹⁷² Illinois is an equitable distribution state so in the absence of a prenuptial agreement, marital property is divided fairly but not necessarily equally in a divorce.¹⁷³

Indiana

Prenuptial agreements are governed by the Uniform Premarital Agreement Act (UPAA) codified in Indiana Code Title 31, Article 11, Chapter 3. The key requirements for a prenuptial agreement are that both parties must agree voluntarily, and the agreement must be written and signed, with full disclosure, and fair and reasonable terms at the time of signing and enforcement.¹⁷⁴ A prenuptial agreement can include provisions regarding the division of property, alimony, debt allocation, business interests, and estate planning.¹⁷⁵

A prenuptial agreement cannot include provisions regarding child support or custody, provisions that violate public policy or state law, or unfair or unconscionable terms.¹⁷⁶ Indiana is an equitable distribution state so in the absence of a prenuptial agreement, assets will be divided fairly but not equally.¹⁷⁷ A prenuptial agreement can be amended or revoked after marriage but it must be done in writing and signed by both parties.¹⁷⁸

¹⁶⁹ 750 ILL. COMP. STAT. 10/7 (2023).

¹⁷⁰ 750 ILL. COMP. STAT. 10/4 (2023).

¹⁷¹ *Id.*

¹⁷² 750 ILL. COMP. STAT. 10/6 (2023).

¹⁷³ 750 ILL. COMP. STAT. 5/503 (2023).

¹⁷⁴ IND. CODE § 31-11-3-8 (1997).

¹⁷⁵ *Id.* § 31-11-3-5.

¹⁷⁶ *Id.*

¹⁷⁷ IND. CODE § 31-15-7-5 (2023).

¹⁷⁸ IND. CODE § 31-11-3-7 (1997).

Kansas

In Kansas, prenuptial agreements are governed by the Kansas Premarital Agreement Act (KUPAA), which is codified in Kansas Statutes Annotated § 23-2401 to 23-241. Both parties must voluntarily sign the agreement.¹⁷⁹ Coercion, fraud, or duress could make the agreement invalid.¹⁸⁰ Prenuptial agreements must be in writing and signed by both parties.¹⁸¹ Verbal agreements are not enforceable.¹⁸² Both parties must fully disclose their financial situation, including assets, debts, and income.¹⁸³ Failure to disclose material financial information can render the agreement unenforceable.¹⁸⁴ The terms must be fair and reasonable at the time of signing, and they must not be unconscionable when enforced.¹⁸⁵ Kansas courts will not enforce an agreement that would leave one party destitute or otherwise unfairly disadvantaged.¹⁸⁶ Prenuptial agreements can include provisions regarding the division of property, spousal support, debt responsibility, business interests, and inheritance rights.¹⁸⁷

Prenuptial agreements cannot address child support, custody, or visitation rights.¹⁸⁸ These issues are decided by the court based on the best interests of the child. Provisions that violate public policy or state law, including those that are deemed unconscionable or unfair, will be unenforceable.¹⁸⁹ Kansas is an equitable distribution state meaning that in case of a divorce marital property is divided fairly but not necessarily equally. A prenuptial agreement allows couples to override this default rule.¹⁹⁰ A prenuptial agreement can be modified or revoked after marriage. However, any modifications must be made in writing and signed by both parties.¹⁹¹

¹⁷⁹ KAN. STAT. ANN. § 23-2403 (2023).

¹⁸⁰ *Id.* § 23-2407.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* § 23-2404.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ KAN. STAT. ANN. § 23-2711 (2012).

¹⁹¹ KAN. STAT. ANN. § 23-2406 (2023).

Maine

In Maine, prenuptial agreements are governed by the Maine Uniform Premarital Agreement Act, codified in Title 19-A, § 610 of the Maine Revised Statutes. Both parties must agree voluntarily.¹⁹² The prenuptial agreements must be in writing and signed by both parties.¹⁹³ In Maine, verbal agreements are not enforceable. Both parties must fully disclose their financial situation, including assets, debts, and income.¹⁹⁴ If a party fails to disclose significant information, that can render the agreement unenforceable.¹⁹⁵ The terms must be fair and reasonable at the time they are executed and at the time of enforcement.¹⁹⁶ A prenuptial agreement can cover the division of property, alimony, debt allocation, business interests, and estate planning.¹⁹⁷

A prenuptial agreement cannot dictate child support and custody. Any provision that violates public policy or is deemed illegal by state law is unenforceable.¹⁹⁸ Provisions that would leave one party destitute or in severe financial hardship may not be upheld.¹⁹⁹ An agreement may not be enforced by a court if it was signed under duress or coercion, did not include full financial disclosure, or contains grossly unfair or unconscionable terms.²⁰⁰ Maine is an equitable distribution state.²⁰¹ In the event of a divorce, marital property will be divided fairly but not necessarily equally if there is no prenuptial agreement to override this. A prenuptial agreement can be modified or revoked after marriage if both parties agree in writing to the changes.²⁰²

Montana

Prenuptial agreements are governed by the Montana Uniform Premarital Agreement Act (MUPPA), codified in Montana Code

¹⁹² ME. REV. STAT. ANN. tit. 19-A, § 608 (2024).

¹⁹³ *Id.* § 603.

¹⁹⁴ *Id.* § 608.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* § 604.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.* § 608.

²⁰¹ *Id.* § 953.

²⁰² *Id.* § 607.

Annotated Title 40, Chapter 2, Part 6. A prenuptial agreement must be entered into voluntarily, written, and signed, and provide full financial disclosure, and fair and reasonable terms at the time of execution and at the time of enforcement.²⁰³ In Montana, a prenuptial agreement can cover the division of property, alimony, debt allocation, business interests, and estate planning.²⁰⁴

A prenuptial agreement cannot determine child support, custody, or visitation arrangements.²⁰⁵ These decisions are made by the court based on the best interests of the child. A prenuptial agreement cannot violate public policy or state law.²⁰⁶ There cannot be any unfair or unconscionable terms.²⁰⁷ Montana follows equitable distribution principles for dividing marital property.²⁰⁸ This means that in the absence of a prenuptial agreement, property will be divided fairly, but not necessarily equally, in the event of divorce. A prenuptial agreement can be modified or revoked after marriage if both parties agree to the changes in writing.²⁰⁹

Nebraska

In Nebraska, prenuptial agreements are governed by the Uniform Premarital Agreement Act. This is codified in Nebraska Revised Statutes § 42-1001 through § 42-1011. These agreements allow couples to establish rules regarding property division, finances, and other matters before marriage to provide clarity and protection in the event of divorce, separation, or death. Both parties must agree voluntarily without coercion, fraud, or duress.²¹⁰ If one party was pressured into signing, the agreement may be invalidated. A prenuptial agreement must be in writing and signed by both parties to be enforceable.²¹¹ Both parties must provide a fair and reasonable financial disclosure of their assets, liabilities, income, and debts.²¹² The terms must be fair and reasonable at

²⁰³ MONT. CODE ANN. § 40-2-608 (1987).

²⁰⁴ *Id.* § 40-2-605.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* § 40-2-608.

²⁰⁸ *Id.* § 40-4-202.

²⁰⁹ *Id.* § 40-2-607.

²¹⁰ NEB. REV. STAT. § 42-1006 (2024).

²¹¹ *Id.* § 42-1003.

²¹² *Id.* § 42-1006.

the time of signing and at the time of enforcement.²¹³ A prenup in Nebraska can cover property division, alimony, debts, business interests, and inheritance rights.²¹⁴

Child-related matters cannot be determined in a prenuptial agreement.²¹⁵ A prenuptial agreement also cannot include terms that are deemed unconscionable or grossly unfair at the time of signing or enforcement.²¹⁶ Provisions that violate Nebraska law or public policy, such as those encouraging divorce or involving illegal activities, will not be enforceable.²¹⁷ Nebraska is an equitable distribution state in which marital property is divided fairly although not necessarily equally, in the event of divorce absent a prenuptial agreement.²¹⁸ A prenuptial agreement in Nebraska can be modified or revoked after marriage but any changes must be in writing, signed by both parties, and follow the same formalities as the original agreement.²¹⁹

Nevada

Prenuptial agreements are governed by the Uniform Premarital Agreement Act (UPAA), which is codified in Nevada Revised Statutes Chapter 123A. Both parties must voluntarily agree.²²⁰ Prenuptial agreements must be in writing and signed by both parties.²²¹ Both parties must fully disclose their financial situation.²²² The terms of the agreement must be fair and reasonable at the time the agreement is executed and at the time it is enforced.²²³ Prenuptial agreements can cover a wide variety of financial and property-related matters.²²⁴

In Nevada, prenuptial agreements cannot cover child support and custody. They also cannot include any public policy violations or

²¹³ *Id.*

²¹⁴ *Id.* § 42-1004.

²¹⁵ *Id.*

²¹⁶ *Id.* § 42-1006.

²¹⁷ *Id.* § 42-1004.

²¹⁸ *Id.* § 42-366.

²¹⁹ *Id.* § 42-1006.

²²⁰ NEV. REV. STAT. ch. 123A.080 (1989).

²²¹ *Id.* ch. 123A.040.

²²² *Id.* ch. 123A.080.

²²³ *Id.*

²²⁴ *Id.* ch. 123A.050.

unfair terms.²²⁵ A court may refuse to enforce the agreement if it was signed under duress, financial disclosure was not made by one or both parties, or the agreement is found to be grossly unfair.²²⁶ Nevada is a community property state meaning that in the absence of a prenuptial agreement, property acquired during the marriage is generally considered jointly owned and is subject to equal division.²²⁷ A prenuptial agreement can be modified or revoked, but any amendment must be in writing, with the consent and signature of both parties.²²⁸

New Mexico

In New Mexico, prenuptial agreements are governed by the Uniform Premarital Agreement Act (UPAA), which is codified in New Mexico Statutes 40-3A-1 to 40-3A-9. Prenuptial agreements can address division of property, spousal support, debt allocation, business interests, and estate planning.²²⁹ Prenuptial agreements cannot dictate child custody or child support provisions.²³⁰ Any provision that violates New Mexico law or public policy will be unenforceable.²³¹ If the terms of the prenuptial agreement leave one party in extreme financial hardship or are otherwise grossly unfair, a court may refuse to enforce them.²³² New Mexico is a community property state so in the absence of a prenuptial agreement, assets acquired throughout the marriage will be considered jointly owned so it will be divided equally.²³³ A prenuptial agreement can be modified or revoked after marriage, but any changes must be made in writing, signed by both parties, and executed voluntarily.²³⁴

North Carolina

Prenuptial agreements are governed by the North Carolina Uniform Premarital Agreement Act, codified in North Carolina

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* ch. 123.220.

²²⁸ *Id.*

²²⁹ NEW. MEX. REV. STAT., ch. 40 -3A-1 (1995).

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* § 40-3A-7.

²³³ *Id.* § 40-4-7.

²³⁴ *Id.* § 40-3A-6.

General Statutes Chapter 52B. The agreement must follow the same formalities listed in the Uniform Premarital Agreement Act. Prenuptial agreements can define how property will be divided in the event of divorce or death.²³⁵ They can also set terms, waive spousal support, and determine the responsibility for debts incurred before or during the marriage.²³⁶ In addition, they can cover business assets and estate planning.²³⁷ North Carolina is an equitable distribution state.²³⁸ Property acquired before a marriage is generally considered separate property.²³⁹ In the event of a divorce, if there is no prenuptial agreement, the property will be divided fairly but that might not be equally.²⁴⁰ A prenuptial agreement can be modified or revoked, but the changes must be made in writing, made voluntarily, and signed by both parties.²⁴¹

North Dakota

The North Dakota Uniform Premarital Agreement Act (UPAA), codified in North Dakota Century Code Title 14, Chapter 14-03, governs prenuptial agreements. It has the same formalities as the Uniform Premarital Act. Prenuptial agreements can address a wide variety of financial and property-related matters.²⁴² To be enforceable a prenuptial agreement must be entered into voluntarily, provide full financial disclosure, and the terms must be fair and reasonable at the time of execution and enforcement.²⁴³ A court may refuse to enforce the agreement if it was signed under duress, financial disclosure was incomplete, or the terms are grossly unfair.²⁴⁴ The default rule in case of divorce is equitable distribution: that marital property is to be split fairly but it does not have to be divided equally.²⁴⁵ A prenuptial agreement allows couples to bypass this rule. In North Dakota, a prenuptial agreement

²³⁵ N.C. GEN. STAT. ch. 52B-4 (1987).

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ N.C. GEN. STAT. ch. 50-20 (2023).

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ N.C. GEN. STAT. ch. 52B-6 (1987).

²⁴² N.D. CENT. CODE § 14-03-01 (2013).

²⁴³ *Id.* § 14-03-08.

²⁴⁴ *Id.* § 14-03-09.

²⁴⁵ N.D. CENT. CODE § 14-05-24 (2022)

can be modified or revoked, if any changes or revocation are made in writing and signed by both parties.²⁴⁶

Oregon

Oregon follows the same approach as the Uniform Premarital Agreement Act. This is codified in Oregon Revised Statutes Chapter 108.700 to 108.730. Both parties must agree voluntarily and provide full disclosure, and the terms must be fair and reasonable.²⁴⁷ Prenuptial agreements can address a wide range of matters including division of property and alimony.²⁴⁸ A prenuptial agreement cannot address child support, custody, or visitation.²⁴⁹ These matters are decided by a court. The agreement also cannot have terms that are heavily one-sided or have any terms that would violate Oregon law or public policy.²⁵⁰ Oregon is an equitable distribution state, so if there is no prenuptial agreement, marital assets will be divided fairly although not necessarily equally.²⁵¹ A prenuptial agreement can be amended or revoked as long as the two parties are doing it voluntarily and have a signed written agreement.²⁵²

Rhode Island

In, Rhode Island, prenuptial agreements are governed by the Rhode Island Premarital Agreement Act. This is codified in the Rhode Island General Laws § 15-17. Both parties must agree voluntarily, and evidence showing otherwise could render the prenuptial agreement unenforceable.²⁵³ Prenuptial agreements must be in writing and signed by both parties.²⁵⁴ Both parties must provide full financial disclosure.²⁵⁵ The terms of the prenuptial agreement must be fair and reasonable at the time

²⁴⁶ *Id.*

²⁴⁷ OR. REV. STAT. § 108.725 (2023).

²⁴⁸ *Id.* § 108.710.

²⁴⁹ *Id.* § 108.725.

²⁵⁰ *Id.*

²⁵¹ *Id.* § 107.105(1)(f).

²⁵² *Id.* § 108.720.

²⁵³ R.I. GEN. LAWS § 15-17-6 (2023).

²⁵⁴ *Id.* § 15-17-2.

²⁵⁵ *Id.* § 15-17-6.

of signing.²⁵⁶ Prenuptial agreements can cover the division of property, alimony, debt allocation, business interests, and estate planning.²⁵⁷

A prenuptial agreement cannot address child support or custody, violate public policy, or have unconscionable terms.²⁵⁸ A court could refuse to enforce a prenuptial agreement if one party was coerced into signing the agreement, there was incomplete or misleading information disclosed regarding finances, or the terms were so unfair that one party would face hardship at the time of signing.²⁵⁹ If there is no prenuptial agreement, marital property will be divided fairly although not necessarily equally because Rhode Island follows equitable distribution principles.²⁶⁰

South Dakota

South Dakota follows the Uniform Premarital Agreement Act approach. This is codified in the South Dakota Codified Laws Chapter 25-2. Both parties must agree voluntarily.²⁶¹ The agreement must be in writing and signed.²⁶² There must be a full financial disclosure by both parties.²⁶³ Prenuptial agreements can cover a wide variety of financial and property-related issues.²⁶⁴

A prenuptial agreement cannot dictate any matters related to child support or custody.²⁶⁵ The terms cannot be unfair or unconscionable.²⁶⁶ There cannot be any provision that would violate state law or public policy.²⁶⁷ In the absence of a prenuptial agreement, marital property will be divided fairly although it may not be an equal division.²⁶⁸

²⁵⁶ *Id.*

²⁵⁷ *Id.* § 15-17-3.

²⁵⁸ *Id.*

²⁵⁹ *Id.* § 15-17-6.

²⁶⁰ *Id.* § 15-5-16.1.

²⁶¹ S.D. CODIFIED LAWS § 25-2-21 (1989).

²⁶² *Id.* § 25-2-17.

²⁶³ *Id.* § 25-2-21.

²⁶⁴ *Id.* § 25-2-18.

²⁶⁵ *Id.*

²⁶⁶ *Id.* § 25-2-21.

²⁶⁷ *Id.* § 25-2-18.

²⁶⁸ *Id.* § 25-4-44.

Texas

In Texas, prenuptial agreements are governed by the Texas Family Code, specifically Chapter 4. Both parties must agree voluntarily, and if it can be shown that one party was pressured into signing, a court may not enforce the agreement.²⁶⁹ Prenuptial agreements must be in writing and signed by both parties to be legally valid.²⁷⁰ The terms must be fair and reasonable at the time of signing.²⁷¹ Texas law does *not* require parties to fully disclose their financial situation, but a Texas court could interpret failure to disclose as unconscionable.²⁷² Prenuptial agreements can cover property division, spousal support, debts, business interests, and inheritance rights.²⁷³

A prenuptial agreement cannot dictate child support or custody.²⁷⁴ It also cannot have terms that are so one-sided that one of the parties would face hardship.²⁷⁵ Any provision that violates Texas law or public policy will not be enforced by a court.²⁷⁶ Texas follows the community property system.²⁷⁷ In the absence of a prenup, marital property will be considered owned jointly. Property acquired before the marriage is considered to be owned separately.²⁷⁸ The prenuptial agreement can be modified or revoked if both parties agree to it and sign.²⁷⁹

Utah

Utah follows the same approach as the Uniform Premarital Agreement Act. This can be found in Utah Code Title 30, Chapter 8. Both parties must agree voluntarily.²⁸⁰ The agreement must be in writing and signed.²⁸¹ Utah law does not explicitly require full

²⁶⁹ TEX. FAM. CODE § 4.006 (1997).

²⁷⁰ *Id.* § 4.002.

²⁷¹ *Id.* § 4.006.

²⁷² *Id.*

²⁷³ *Id.* § 4.003.

²⁷⁴ *Id.*

²⁷⁵ *Id.* § 4.006.

²⁷⁶ *Id.* § 4.003.

²⁷⁷ *Id.* § 3.002.

²⁷⁸ *Id.*

²⁷⁹ *Id.* § 4.005.

²⁸⁰ UTAH CODE § 30-8-6 (2023).

²⁸¹ *Id.* § 30-8-3.

financial disclosure but it suggests parties should provide a full financial disclosure to avoid a claim of fraud.²⁸² Prenuptial agreements can cover a wide variety of matters.²⁸³ Child-related matters cannot be covered in a prenuptial agreement.²⁸⁴ Utah follows the equitable distribution model so if there is no prenup then the property is distributed fairly even though it may not be an equal distribution.²⁸⁵ Utah allows prenuptial agreements to be modified or revoked as long as both parties agree and sign off on it.

Virginia

In Virginia, prenuptial agreements are covered by Virginia Code Title 20, Chapter 3, specifically under the Virginia Premarital Agreement Act (Virginia Code § 20-147 through § 20-155). Both parties must enter the agreement voluntarily.²⁸⁶ A prenuptial agreement must be in writing and signed by both parties.²⁸⁷ The terms of the agreement must be fair and reasonable at the time of signing.²⁸⁸ Full disclosure of financial information is not explicitly required by the law, but the failure to disclose could render the agreement invalid because a court could find it was unconscionable to fail to disclose this.²⁸⁹ Prenuptial agreements can address division of property, spousal support, debts, business interest, and inheritance rights.²⁹⁰ Virginia follows the equitable distribution model for dividing marital property in case of divorce.²⁹¹ Generally under Virginia law, property acquired before the marriage, or property acquired by gift or inheritance is separate property and is not subject to division unless it has been commingled with marital property.²⁹² A prenuptial agreement can be modified or revoked

²⁸² *Id.* § 30-8-6.

²⁸³ *Id.* § 30-8-4.

²⁸⁴ *Id.*

²⁸⁵ *Id.* § 30-3-1.

²⁸⁶ VA. CODE ANN. § 20-151 (1986).

²⁸⁷ *Id.* § 20-149.

²⁸⁸ *Id.* § 20-151.

²⁸⁹ *Id.*

²⁹⁰ *Id.* § 20-150.

²⁹¹ *Id.* § 20-107.3.

²⁹² *Id.*

after marriage as long as that modification is in writing and signed by both parties.²⁹³

Wisconsin

Prenuptial agreements are governed by the Wisconsin Marital Property Act and are generally enforceable under Wisconsin Statutes Chapter 766. It has the same requirements as all the states that follow the Uniform Premarital Agreement Act. A prenuptial agreement can cover a larger amount of issues.²⁹⁴ There cannot be anything in the prenup that dictates child support or custody.²⁹⁵ There also cannot be any public violation or unfairness.²⁹⁶ To be enforceable the agreement must be written and signed.²⁹⁷ Full financial disclosure is legally required by state law.²⁹⁸ Wisconsin is a community property state so in the absence of a prenuptial agreement, marital property will be divided equally.²⁹⁹

V. Conclusion

Prenuptial agreements were once viewed as controversial and even contrary to the core ideals of marriage. These agreements have evolved into an accepted and valuable tool for individuals seeking to define financial responsibilities and expectations in marriage. Although prenuptial agreements are typically associated with people with higher economic status, such as celebrities or the very wealthy, it is becoming common to see middle-class people get a prenuptial agreement.

Early prenups that followed English Common Law usually at minimum fulfilled the requirement of the English Statute of Frauds which is that a prenuptial agreement had to be in writing to be enforceable. Even in the sixteenth century, prenuptial agreements were a way to set terms for property management. With the rise of dual-income households, greater financial independence, and more complex family structures, prenuptial agreements have

²⁹³ *Id.* § 20-153.

²⁹⁴ WIS. STAT. § 766.58(3) (2023).

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.* § 766.58(1).

²⁹⁸ WIS. STAT. § 766.58(6)(c) (2023).

²⁹⁹ *Id.* § 766.31.

become a tool used by both men and women to safeguard personal and shared assets. This shift has been reflected in legal reforms and the establishment of standard approaches to prenuptial agreements. Over time, these agreements have adapted to reflect shifts in societal norms, including greater autonomy for individuals and the complexities of modern relationships. The increasing relevance and acceptance of prenuptial agreements are a response to the ever-changing marriage dynamics and the need for legal frameworks that balance personal autonomy with fairness, especially in case of a divorce or separation. States have taken different approaches in how they balance these interests, but the goal remains to provide some kind of consistency in how prenuptial agreements are to be enforced. Typically to be valid prenuptial agreements have to satisfy the requirements to form a contract. These requirements are that a prenuptial agreement has to be voluntary with consideration and satisfy the statute of fraud. Some states require even more than this for a prenuptial agreement to be valid and legally enforced.

There are three approaches that the states and courts take in determining whether a prenuptial agreement is valid or not. These three approaches are the Uniform Premarital Agreement Act approach (UPAA), the American Law Institute approach (ALI), and the Uniform Premarital and Marriage Agreement Act approach (UPMAA). Each of these approaches provides a different set of rules and guidelines for ensuring that prenuptial agreements are both enforceable and equitable, balancing personal choice with the need to protect vulnerable parties.

The first attempt at trying to form consistency in the enforcement of prenuptial agreements is the UPAA. The Uniform Premarital Agreement Act is typically considered the strictest approach. This approach, established in 1983, represented a step towards uniformity in prenuptial agreements, focusing on voluntariness and financial disclosure. This approach is heavily aligned with regular contract law. The limitations in this approach, particularly the lack of independent legal counsel and its reliance on the parties' ability to show that they were not coerced or uninformed, raised concerns. Critics argued that this approach may disproportionately favor wealthier or more legally sophisticated parties, leaving the disadvantaged party in a more vulnerable position to be exploited. In addition, this approach did not address

the long-term implications of the agreements such as unforeseen changes in financial circumstances, and the complexities of modern assets like intellectual property and cryptocurrency.

The next attempt at trying to form consistency in the enforcement of prenuptial agreement is the American Law Institute approach, introduced in 2002. This approach attempts to balance the principles of autonomy and fairness, by advocating for independent legal counsel and allowing for judicial review of agreements that might be deemed unconscionable or unfair at the time of enforcement. This attempt will also consider what the position of each party was at the time of drafting and what their position was at the time of divorce. However, this approach has also been critiqued for imposing too much judicial oversight, for potentially restricting the freedom of contract, and for its inability to keep up with evolving family structures and new forms of assets.

The third attempt to create consistency in the enforcement of prenuptial agreements is the Uniform Premarital and Marriage Agreement Act, adopted in 2012; this approach takes requirements from the previous attempts. It takes a more balanced approach by offering detailed provisions for both prenuptial and postnuptial agreements. It seeks to address the need for consistency across the states while protecting individuals from coercion and ensuring fairness in the long term. This approach emphasizes transparency in drafting, thorough disclosure, and the possibility of judicial review of unconscionable provisions, particularly those related to spousal support or material changes in circumstances. This approach considers whether general contract requirements are fulfilled and if there would be a hardship if the enforcement took place. While this approach represents an improvement in terms of flexibility and fairness, the UPMAA still faces challenges in terms of inconsistent state adoption and criticisms regarding the potential for overly broad discretion. It is up to each state to decide what approach to take. This means that enforcement of prenuptial agreements is different depending on what approach a state decides to take.

Despite the advances made by these various legal frameworks, prenuptial agreements remain a subject of debate and ongoing reform. As marriage laws and societal norms continue to evolve, future legal reforms will need to address emerging issues such as digital assets, non-traditional family structures, and the

globalization of marriages. Additionally, while prenuptial agreements are increasingly seen as a way to ensure financial clarity and protect individual rights, they must also remain sensitive to the emotional and relational dimensions of marriage, which can encompass implicit economic inequalities that are often not captured in a contractual framework.

Ultimately, the continuing development of prenuptial agreement laws reflects a broader societal shift towards greater autonomy and fairness in personal relationships. As individuals navigate the complexities of marriage in an increasingly fluid and unpredictable world, the legal system's role in balancing personal choice with protective safeguards will remain central to the ongoing conversation about the future of marriage and family law.

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