

Comment,
**THE UNIFORM PREMARITAL
AGREEMENT ACT AND ITS VARIATIONS
THROUGHOUT THE STATES**

Introduction

This article will examine the Uniform Premarital Agreement Act (UPAA or the Act). Part I of the article will give some background about the UPAA and details about the actual contents of the Act. The UPAA outlines the formalities that must be followed when executing an agreement, the topics which can be covered in a premarital agreement, the enforceability of an agreement and other matters. Part II will examine how those states that have adopted the UPAA have modified the original Act to meet the needs of the particular jurisdiction.

**I. Summary of the Uniform Premarital
Agreement Act**

The Uniform Premarital Agreement Act (UPAA or Act) is a uniform act that provides a basis for states to determine how and when a premarital agreement should be enforced. The Act was drafted by the National Conference of Commissioners on Uniform State Laws in 1983.¹ It was proposed partly in response to the large number of people who were getting married and intending to continue to pursue careers outside the home.² This growing cohort was looking for ways to resolve by agreement issues that may arise as a result of the approaching marriage.³ However, a great deal of uncertainty existed about whether the agreement that was reached between the couple would be enforceable because of a lack of uniformity among the states and even among different courts within the same state reached when

¹ UNIF. PREMARITAL AGREEMENT ACT, 9C U.L.A. 35 (2001), available at http://en.wikipedia.org/wiki/Uniform_Premarital_Agreement_Act (last visited Feb. 11, 2009).

² UNIF. PREMARITAL AGREEMENT ACT Refs. & Annos. pref. note (2009).

³ *Id.*

interpreting agreements.⁴ The goals of the UPAA are to provide a sense of confidence in the enforceability of the agreements that are reached by the parties, while also providing sufficient flexibility to allow the courts to make specific determinations when special circumstances call for a variance from the Act.⁵

The UPAA is limited in the scope of agreements to which it is applicable.⁶ It defines a premarital agreement as “an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.”⁷ Therefore, the UPAA does not cover agreements that are made by couples living together who are not contemplating marriage, couples who do not eventually marry, nor any postnuptial or separation agreements.⁸ The Act also does not apply to those couples who are contemplating any of the alternatives to marriage that have been created for same-sex couples, such as civil unions or domestic partnerships.

While the UPAA limits in the type of agreements to which it is applicable, it does not significantly limit what can be covered in a premarital agreement. A variety of issues can be covered in a premarital agreement under the UPAA section 3.⁹ Under the UPAA, parties to a premarital agreement may contract about the following issues:

- (1) The rights and obligations of each of the parties in any of the property or both of them whenever and wherever acquired or located;
- (2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
- (3) The disposition of property upon separation, marital dissolution death, or the occurrence or the nonoccurrence of any other event;
- (4) The modification or elimination of spousal support;
- (5) The making of a will, trust, or other arrangement to carry out the provisions of the agreement;
- (6) The ownership rights in and disposition of the death benefit from a life insurance policy;

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* § 1.

⁸ UNIF. PREMARITAL AGREEMENT ACT at cmt.

⁹ *Id.* § 3.

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- (7) The choice of law governing the construction of the agreement; and
- (8) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.¹⁰

Property is defined in the UPAA as being “an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.”¹¹ Therefore, the UPAA permits parties to contract about any issue listed and anything else that is not against public policy or is not in violation of a criminal statute. The only listed exception is an agreement in which the right to child support is adversely affected.¹² A split exists among the states regarding whether a premarital agreement that limits or eliminates spousal support should be enforceable.¹³ Some states do not permit premarital agreements to control the issue of spousal support, while there is a growing trend among other states to allow a premarital agreement to dispose of this issue.¹⁴

The UPAA does not only provide what can be in a premarital agreement, it also explains when a premarital agreement should be found enforceable. The following explains when a premarital agreement should not be enforced.

- (a) 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.

¹⁰ *Id.* § 3(a)(1)-(8).

¹¹ *Id.* § 1.

¹² *Id.* § 3(b).

¹³ *Id.* § 3 cmt.

¹⁴ UNIF. PREMARITAL AGREEMENT ACT § 3 cmt.

- (b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party 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.
- (c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.¹⁵

It is important to note that the UPAA says that the agreement must not be unconscionable at the time the agreement is executed, not when it is actually being enforced.¹⁶ Unconscionability is determined by looking at the standard used in the Uniform Marriage and Divorce Act.¹⁷ The Uniform Marriage and Divorce Act states that in order to determine if an agreement is unconscionable, a court may look to how the agreement affects the economic circumstances of the parties, and the conditions under which the agreement was made.¹⁸ The UPAA is structured in such a way to place the burden of proof on the party that is alleging the agreement is not enforceable; however, the states are split about where the burden should actually lie.¹⁹ Some states have followed the UPAA and placed the burden on the party attacking the agreement, while others have made the party who is relying on the agreement prove its enforceability, and others have chosen a middle ground, stating “that a premarital agreement is valid but if a disproportionate disposition is made for the wife, the husband bears the burden of proof of showing adequate disclosure.”²⁰ Presumably, rules of gender equality would make this reciprocal and this intermediate position is not a rule about dispositions to wives as opposed to husbands, but a rule about disproportionate divisions.

Another issue of enforceability arises when the marriage is found to be void. Under the UPAA if the marriage is found to be void, then an otherwise valid premarital agreement will be en-

¹⁵ *Id.* § 6 (a)-(c).

¹⁶ *Id.* § 6 (a)(2).

¹⁷ *Id.* § 6 cmt.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ UNIF. PREMARITAL AGREEMENT ACT § 6 cmt.

forced only enough so that an inequitable result does not occur.²¹ Thus the UPAA provides some protection to parties who do not realize that their marriage is void for some reason by preventing the court from allowing a completely unfair result to be reached as a result of the breakdown of the parties' relationship.

The UPAA also provides certain formalities that must be followed when creating the agreement in order for it to be enforceable. The agreement must be in writing and it must be signed by both parties.²² This requirement in the UPAA is often more liberal than what many states require. Many states require either a notarization or an acknowledgment for the agreement to be enforceable.²³ The UPAA also allows the agreement to consist of one or more documents that the parties intended to be included as part of the agreement.²⁴ This seems to indicate that the court can look beyond the "four corners" of the agreement to interpret its meaning. The Comment to Section 2 of the UPAA also makes it clear that because a premarital agreement is a contract between the two parties, each party must have the capacity to enter into a binding agreement.²⁵ However, the Comment does add that if the person lacking capacity is allowed to enter into binding agreements under other provisions of law, then he or she can enter into a premarital agreement under those provisions.²⁶

II. State-by-State Analysis

1. *Arizona*

Arizona adopted a version of the UPAA in 1991 and it controls premarital agreements executed on September 21, 1991 or after.²⁷ Arizona's version of the UPAA is contained in Arizona Revised Statutes sections 25-201 to 25-205.²⁸ The Arizona legislature chose to adopt most of the UPAA, with only a slight varia-

²¹ *Id.* § 7.

²² *Id.* § 2.

²³ *Id.* § 2 cmt.

²⁴ *Id.*

²⁵ *Id.*

²⁶ UNIF. PREMARITAL AGREEMENT ACT § 2 cmt.

²⁷ ARIZ. REV. STAT. tit. 25 ch. 2 art. 1 Refs. & Annos. (West 2009).

²⁸ *Id.*

tion from the uniform act. The only real difference between Arizona's version of the UPAA and the original act is that Arizona requires parties to get the agreement notarized or acknowledged.²⁹ Otherwise the Arizona act follows the UPAA in that the party seeking to render the agreement unenforceable bears the burden of proof.³⁰ The Arizona Uniform Premarital Act is also like the UPAA in that Arizona allows the parties to contract about spousal support as long as the agreement does not violate public policy.³¹

2. *Arkansas*

Arkansas adopted the UPAA in 1987. The Arkansas Premarital Agreement Act (PAA) is found in Arkansas Code sections 9-11-401 to 9-11-413.³² It is similar to the original uniform act. In Arkansas the courts have held that premarital agreements must be made in contemplation of the marriage lasting until death, and not in anticipation that the marriage will end in divorce.³³ However, if the marriage does end in divorce that does not render the agreement invalid as long as that was not the sole purpose of the agreement.³⁴ Arkansas requires the premarital agreement not only to be in writing and signed by both parties, the agreement must also be acknowledged by both parties.³⁵ Another area in which the Arkansas PAA differs from the original UPAA is in the enforcement section. The Arkansas PAA section 9-11-406(a)(2)(ii) adds the language "after consulting with legal counsel," thus stating that "an agreement is not enforceable . . . if the agreement was unconscionable when it was executed and, before execution of the agreement, that party . . . did not voluntarily and expressly waive after consulting with legal counsel."³⁶ This means that if there was no financial disclosure, the party, who did not get the disclosure must have

²⁹ UNIF. PREMARITAL AGREEMENT ACT § 2.

³⁰ *In re Marriage of Pownall*, 5 P.3d 911, 914 (Ariz. Ct. App. 2000).

³¹ *Hrudka v. Hrudka*, 919 P.2d 179, 1985 (Ariz. Ct. App. 1995).

³² ARK. CODE ANN. § 9-11-401 to 9-11-413 (2009).

³³ *Banks v. Evans*, 64 S.W.3d 746, 749 (Ark. 2002).

³⁴ *Id.*

³⁵ ARK. CODE ANN. § 9-11-402 (2009).

³⁶ ARK. CODE ANN. § 9-11-406(a)(1)-(2)(ii) (2009).

consulted with an attorney before waiving the right to the disclosure.

3. California

California adopted the UPAA in 1986, and it applies to any premarital agreements executed on or after January 1, 1986.³⁷ California's UPAA can be found in California Family Code sections 1600 to 1617.³⁸ The California UPAA differs from the original UPAA with regard to what can be contracted about in a valid premarital agreement and when a premarital agreement is enforceable.

California's UPAA removes section 3(a)(4) of the UPAA, which allows parties to a premarital agreement to modify or eliminate spousal support, and inserts section 1612(c).³⁹ Under section 1612(c), any provision regarding spousal support is unenforceable if the party against whom enforcement is sought was not represented by independent legal counsel when the agreement was signed or if the provision is found to be unconscionable when it is to be enforced.⁴⁰ This section also provides that "an otherwise unenforceable provision in a premarital agreement regarding spousal support may not become enforceable solely because the party against whom enforcement is sought was represented by independent counsel."⁴¹ Therefore, California raises the standard for parties hoping to modify or eliminate spousal support by agreement. However, it is possible to validly waive spousal support by premarital agreement in California. The court in *In re the Marriage of Pendleton and Fireman* held that no public policy is violated by a waiver of spousal support when it is executed by intelligent people who are self-sufficient in earning potential and property, and whom both have consulted with independent legal counsel regarding their marital rights and obligations at the time they executed the waiver.⁴²

³⁷ *In re Marriage of Bellio*, 105 Cal. App. 4th 630, 633 (2003).

³⁸ CAL. FAM. CODE § 1600 to 1617 (West 2009).

³⁹ UNIF. PREMARITAL AGREEMENT ACT § 3(a) (2009); CAL. FAM. CODE § 1612 (West 2009).

⁴⁰ CAL. FAM. CODE § 1612(c) (West 2009).

⁴¹ *Id.*

⁴² *In re the Marriage of Pendleton and Fireman*, 5 P.3d 839, 848 (Cal. 2000).

Under California's UPAA section 1615(a)(2)(A), the party must have been provided "fair, reasonable and full disclosure of the property or financial obligations of the other party."⁴³ This varies from the original UPAA in that the UPAA requires only "fair and reasonable disclosure,"⁴⁴ and thus under the UPAA less than full disclosure might be acceptable.⁴⁵ California chose to add an additional provision to its version of the UPAA, titled section 1615(c), in which the legislature gave the standard for determining whether an agreement was executed voluntarily.⁴⁶ This subsection states that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following criteria were met:

- (1) The party against whom enforcement is sought was represented by independent legal counsel at the time of signing the agreement or, after being advised to seek independent legal counsel, expressly waived, in a separate writing, representation by independent legal counsel.
- (2) The party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the agreement and advised to seek independent legal counsel and the time the agreement was signed.
- (3) The party against whom enforcement is sought, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written. The explanation of the rights and obligations relinquished shall be memorialized in writing and delivered to the party prior to signing the agreement. The unrepresented party shall, on or before the signing of the premarital agreement, execute a document declaring that he or she received the information required by this paragraph and indicating who provided that information.
- (4) The agreement and the writings executed pursuant to paragraphs (1) and (3) were not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement.
- (5) Any other factors the court deems relevant.⁴⁷

⁴³ CAL. FAM. CODE § 1615(a)(2)(A) (West 2009).

⁴⁴ UNIF. PREMARITAL AGREEMENT ACT § 6(a)(2)(i) (2009).

⁴⁵ UNIF. PREMARITAL AGREEMENT ACT § 6(b) (2009); CAL. FAM. CODE § 1615 (West 2009).

⁴⁶ CAL. FAM. CODE § 1615(c) (West 2009).

⁴⁷ *Id.*

4. *Connecticut*

Connecticut adopted the UPAA in 1995 and it applies to any agreement executed on or after October 1, 1995.⁴⁸ The Connecticut PAA is contained in Connecticut General Statutes sections 46b-36a to 46b-36j.⁴⁹ The purpose of the Connecticut PAA is to recognize the “legitimacy of the premarital contracts in Connecticut” and not to constrain such agreements to a rigid format so as to restrict their applicability.⁵⁰ The Connecticut PAA changed the meaning of “property” from the original UPAA to include both tangible and intangible property.⁵¹ The formalities of the premarital agreements in Connecticut are also relaxed since the Connecticut PAA does not require that the agreement be in writing and signed by both of the parties; the statute instead says that the agreement “shall” be in writing and signed.⁵² The Court in *Dornemann v. Dornemann* held that the legislature’s use of the word “shall” rather than “must” shows that the section is meant to be directory and not mandatory, with regard to the signature of the party attempting to enforce the agreement.⁵³ Therefore, the signature of the party who wants to enforce the agreement is not a requirement for the agreement to be enforceable.

The Connecticut legislature also made some changes to what can be contracted about in a premarital agreement. It added a provision that the parties can contract as to the right as a “participant or participant’s spouse” under a retirement plan.⁵⁴ Another change is the addition of a sentence, which states that any provision relating to the custody, visitation, and care or any other statement affecting a child shall be subject to judicial review and modification.⁵⁵ This is a significant addition because the original act does not mention child custody issues, permitting the inference that this is not a permissible subject for contracting. Connecticut, therefore, allows future spouses to state their wishes

⁴⁸ CONN. GEN. STAT. ANN. § 46b-36(a) (2009).

⁴⁹ CONN. GEN. STAT. ANN. § 46b-36a to 46b-36j (West 2008).

⁵⁰ *Dornemann v. Dornemann*, 850 A.2d 273, 285 (Conn. Super. Ct. 2004).

⁵¹ CONN. GEN. STAT. ANN. § 46b-36b (West 2008).

⁵² *See Dornemann*, 850 A.2d at 284-85.

⁵³ *Id.*

⁵⁴ CONN. GEN. STAT. ANN. § 46b-36d(a)(7) (West 2008).

⁵⁵ CONN. GEN. STAT. ANN. § 46b-36d(c) (West 2008).

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regarding child-related issues, while allowing the courts to still protect the best interests of the child.

Connecticut has also changed how and when a premarital agreement is enforceable. Under section 46b-36g a party cannot waive the right to disclosure of the other party's financial information.⁵⁶ Courts have held that the best way to comply with this financial disclosure requirement is to add a "written schedule" to the premarital agreement, but this exact method is not required.⁵⁷ The last change that Connecticut made to the original UPAA is that another factor to be considered regarding enforceability is whether the party against whom enforcement is sought was afforded a "reasonable opportunity" to consult with independent legal counsel.⁵⁸ This does not, however, require that the party have actually obtained the legal advice.⁵⁹ Connecticut has also kept some of the original UPAA's language and requires that the agreement be executed voluntarily.⁶⁰ The amount of time given to the other party to review the agreement is a relevant factor in determining whether the agreement was made voluntarily or whether it was signed under duress.⁶¹

Thus while the Connecticut legislature allows parties to contract about more issues, such as retirement plans and child care issues, it also places a few more restrictions on a premarital agreement's enforceability.

5. *Delaware*

Delaware chose to adopt the UPAA in 1996 and it applies to all premarital agreements executed on or after September 1, 1996.⁶² The Delaware statute can be found in 13 Delaware Code sections 321 to 328.⁶³ The Delaware UPAA is very similar to the original UPAA. The main difference between the two statutes is that the language in section 6(b) of the UPAA has been removed

⁵⁶ CONN. GEN. STAT. ANN. § 46b-36g (West 2008).

⁵⁷ *Friezo v. Friezo*, 914 A.2d 533, 550 (Conn. 2004).

⁵⁸ CONN. GEN. STAT. ANN. § 46b-36g(a)(4) (West 2008).

⁵⁹ *Friezo*, 914 A.2d at 557.

⁶⁰ CONN. GEN. STAT. ANN. § 46b-36(g)(a)(1) (West 2008).

⁶¹ *Friezo*, 914 A.2d at 551.

⁶² DEL. CODE ANN. tit. 13, ch. 3, subch. II, Refs. & Annos. (2009).

⁶³ DEL. CODE ANN. tit. 13 §§ 321 to 328 (2009).

from the Delaware UPAA section 326.⁶⁴ The removal of this subsection from the Delaware UPAA suggests that Delaware does not allow for a modification from the original agreement for elimination or modification of spousal support because the party against whom enforcement is sought is eligible for public assistance because of that elimination or modification of the spousal support amount otherwise due to the party.

6. *District of Columbia*

The District of Columbia adopted the UPAA in 1995 and applied the new Act to all of the premarital agreements executed on or after February 9, 1996.⁶⁵ The District of Columbia has made several changes to the original UPAA. The first and probably, most significant change is that the District of Columbia allows same-sex couples to create premarital agreements as domestic partners.⁶⁶ The definitions for domestic partner and domestic partnership that apply to the UPAA are found in sections 32-701(3) & (4) of the District of Columbia Official Code.⁶⁷ The rest of the District of Columbia's UPAA refers to domestic partner or domestic partnership along with the terms of traditional marriage, to make sure that all sections apply.⁶⁸ A change relating to the addition of domestic partnerships to the UPAA is found in section 46-503(a)(3) where the word "annulment" is added following "marital dissolution."⁶⁹

7. *Florida*

Florida adopted the UPAA in 2007. The new Act applies to all premarital agreements executed on or after October 1, 2007.⁷⁰ Florida's Uniform Premarital Agreement Act is very similar to the original UPAA. However, Florida has enacted some variations from the original Act. Florida's UPAA specifically states in

⁶⁴ DEL. CODE ANN. tit. 13 § 326 (2009).

⁶⁵ D.C. CODE tit. 46, subt. I, ch. 5, Refs. & Annos. (2009).

⁶⁶ D.C. CODE §§ 46-501(1) & (2) (2008).

⁶⁷ D.C. CODE §§ 32-701 (3) & (4) (2008).

⁶⁸ D.C. CODE §§ 46-502 to 510 (2008).

⁶⁹ D.C. CODE §§ 46-503(a)(3) (2008).

⁷⁰ FLORIDA PREMARITAL AGREEMENT LAW available at <http://marriage.uslegal.com/premarital-agreement/Florida-premarital-agreement-law/> (last visited Nov. 15, 2010).

61.079(4)(a)4 that spousal support cannot not only be waived but it can also be established in the premarital agreements.⁷¹ The biggest change is found in the provision regarding enforcement, Florida allows a premarital agreement to be found unenforceable if the party against whom enforcement is sought can prove the “agreement was the product of fraud, duress, coercion or overreaching. . .”⁷²

8. *Hawaii*

Hawaii chose to adopt a version of the UPAA in June 1987.⁷³ The Hawaii UPAA is located in Hawaii Revised Statutes sections 572D-1 to 572D-11⁷⁴ and is virtually identical to the UPAA that was approved by the National Conference in 1983.⁷⁵

9. *Idaho*

Idaho chose to adopt the UPAA in 1995.⁷⁶ The Idaho UPAA is in the Idaho Code sections 32-921 to 32-929.⁷⁷ The Idaho UPAA requires the parties to not only sign the agreement and have it in writing, but also to get it “executed and acknowledged or proved as provided in Idaho Code sections 32-917 through 32-919.”⁷⁸ The other ways to prove an agreement are the way that land conveyances are required to be proved, the way that a marriage settlement agreement is proved, and the way that real property is conveyed.⁷⁹ Other than this variation to the Idaho UPAA, the rest of the Idaho statute follows the original UPAA.

10. *Illinois*

Illinois adopted its version of the UPAA in 1990 and it applies to all premarital agreements executed on or after January 1,

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Lewis v. Lewis*, 748 P.2d 1362, 1365 (Haw. 1988).

⁷⁴ HAW. REV. STAT. ANN. § 572D-1 to 572D-11 (2009).

⁷⁵ *Lewis*, 748 P.2d at 1365.

⁷⁶ IDAHO CODE § 32-921 (2009).

⁷⁷ IDAHO CODE §§ 32-921 to 32-929 (2008).

⁷⁸ IDAHO CODE ANN. § 32-922 (2008).

⁷⁹ IDAHO CODE ANN. §§ 32-917 to 919 (2008).

1990.⁸⁰ The Illinois UPAA can be found in Illinois Compiled Statutes chapter 750 sections 10/1 to 10/11.⁸¹ The Court in *In re Marriage of Best* described the Illinois UPAA as allowing couples to waive or modify their future marital rights by entering into a valid premarital agreement.⁸² The major change from the original UPAA is in the enforcement section. The Illinois Act changes the language of the original UPAA from “to become eligible for support under a program of public assistance at time of separation or marital dissolution” to “undue hardship in light of circumstances not reasonably foreseeable at the time of the execution of the agreement.”⁸³ Thus Illinois allows for a provision of the premarital agreement dealing with the modification or elimination of support to be changed by a court to avoid the party against whom enforcement is sought from suffering undue hardship.

11. *Indiana*

Indiana adopted the UPAA in 1997.⁸⁴ Yet, Indiana retroactively applied the act to premarital agreements signed on or after July 1, 1995.⁸⁵ The Indiana UPAA is located in Indiana Code sections 31-11-3-1 to 31-11-3-10.⁸⁶ Indiana changed some of the organizational structure of the UPAA, even where it did not change the language or meaning of that section of the act.⁸⁷ An example of this can be found in section 31-11-3-5 of the Indiana UPAA where the original UPAA’s language is contained within the Indiana Act, but it has been rearranged in a manner that Indiana’s legislature preferred for its state.⁸⁸ With regard to what can be contracted about in Indiana, the Indiana courts have said that as a general rule a provision in a premarital agreement

⁸⁰ ILL. COMP. STAT. ANN. ch. 750, Act 10, Refs. & Annos. (2009).

⁸¹ ILL. COMP. STAT. ANN. ch. 750 §§ 10/1 to 10/11 (2009).

⁸² *In re Marriage of Best*, 886 N.E.2d 939, 945 (Ill. 2008).

⁸³ ILL. COMP. STAT. ANN. ch. 750 § 10/7(b) (West 2009); UNIF. PREMARI-TAL AGREEMENT ACT § 6(b) (2009).

⁸⁴ IND. CODE ANN. tit. 31, art. 11, ch. 3, Refs. & Annos. (West 2009).

⁸⁵ IND. CODE ANN. § 31-11-3-1 (West 2009).

⁸⁶ IND. CODE ANN. § 31-11-3-1 to 31-11-3-10 (West 2009).

⁸⁷ *Id.*

⁸⁸ IND. CODE ANN. § 31-11-3-5 (West 2009).

about attorney's fees is enforceable as long as it does not violate any laws or public policy.⁸⁹

A major shift from the original UPAA can be seen in section 31-11-3-8 of the Indiana Act which has eliminated the subsections of the original UPAA requiring either a "fair and reasonable disclosure" of the other party's financial information, or a voluntary and express waiver of the right to this disclosure, and that the party against whom enforcement sought could not have reasonably had the knowledge of the other party's financial information otherwise.⁹⁰ Instead, the Indiana UPAA only states that a premarital agreement is not enforceable if the agreement was unconscionable when it was executed.⁹¹

Another change in the enforcement section of Indiana's Act is similar to the language of the Illinois UPAA. Indiana also removes from its section (b), under enforcement and the elimination or modification of spousal support, the language about the party qualifying for public assistance and replaces it with that party bearing an undue hardship as a result of the elimination or modification of the spousal support.⁹² The Court in *Rider v. Rider* states that while a premarital agreement that causes one spouse to be forced onto public assistance may be unconscionable, a better test for unconscionability is to compare the situations of both parties.⁹³ Therefore, the Indiana UPAA is fairly similar to the original UPAA and the major changes can be found in the context of enforcing the premarital agreement.

12. Iowa

Iowa adopted its version of the UPAA in 1991.⁹⁴ The Iowa UPAA applies to all premarital agreements signed on or after January 1, 1992.⁹⁵ The Iowa UPAA is located in the Iowa Code Annotated sections 596.1 to 596.12.⁹⁶ Several differences exist

⁸⁹ *Wagner v. Wagner*, 888 N.E.2d 924 (Ind. Ct. App.).

⁹⁰ UNIF. PREMARITAL AGREEMENT ACT § 6(a)(2)(i)-(iii) (2009); IND. CODE ANN. § 31-11-3-8 (West 2009).

⁹¹ IND. CODE ANN. § 31-11-3-8 (West 2009).

⁹² *Id.*

⁹³ *Rider v. Rider*, 669 N.E.2d 160, 164 (1996).

⁹⁴ IOWA CODE ANN. tit. XV, sub. 1, ch. 596, Refs. & Annos. (2009).

⁹⁵ *Id.*

⁹⁶ IOWA CODE ANN. §§ 596.1 to 596.12 (West 2009).

between the original UPAA and the version that Iowa choose to adopt.

The first difference is that Iowa removed the terms “income and earnings” from its definition of property in section 596.1.⁹⁷ This means that when a couple contracts about property in their premarital agreements they are not including any of their income or other earnings, and thus if they want to include these items they would have to use these terms separately. However, since the Iowa legislature removed this language from the definition, it may have intended to preclude individuals from being able to contract about their income or other earnings in a premarital agreement.

Another small change from the original UPAA relates to the formalities of a premarital agreement. Iowa specifically states in its UPAA that both parties shall execute all documents required to enforce the agreement.⁹⁸ By including this language within its Act, Iowa seems to be trying to prevent the parties who sign such an agreement from later not providing all of the documents that might be necessary to execute the document and still seeking to have the agreement enforced.

A major difference between the original UPAA and Iowa’s version deals with spousal support. Iowa’s UPAA in section 596.5(2) states that the right to “spouse or child” support shall not be adversely affected by a premarital agreement.⁹⁹ As previously stated, the original UPAA allows the parties to contract about spousal support and to adversely affect the party against whom enforcement is sought; however, Iowa is one of the states that has chosen to prohibit these parties from contracting about spousal support in this way.¹⁰⁰

The Iowa UPAA, like the original UPAA, explains in section 596.8 that an agreement is not enforceable if it is not executed voluntarily.¹⁰¹ While there is no definition of what voluntarily means in either the original UPAA or Iowa’s UPAA, the Iowa courts have held that the appropriate test for whether

⁹⁷ UNIF. PREMARITAL AGREEMENT ACT § 1(2) (2009); IOWA CODE ANN. § 596.1 (2009).

⁹⁸ IOWA CODE ANN. § 596.4 (West 2009).

⁹⁹ IOWA CODE ANN. § 596.5 (West 2009).

¹⁰⁰ *In re Marriage of Shanks*, 758 N.W.2d 506, 513 (Iowa 2008).

¹⁰¹ IOWA CODE ANN. § 596.8(A)(1) (West 2009).

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an agreement was executed voluntarily is whether it was free from duress or undue influence.¹⁰² The court in *In re Marriage of Spiegel* held that because the bride-to-be had the option of cancelling the wedding, the embarrassment of having to cancel the ceremony, even the night before the wedding was scheduled to take place, did not establish duress or undue influence.¹⁰³ Another change in the enforcement part of the Iowa UPAA is that unconscionability alone is sufficient for a premarital agreement to be held unenforceable, while under the UPAA, unenforceability occurs only if an agreement was both unconscionable and there was not a “fair and reasonable” financial disclosure.¹⁰⁴ Under the Iowa UPAA the lack of a “fair and reasonable” disclosure is separate grounds for the premarital agreement to be found to be unenforceable.¹⁰⁵

13. *Kansas*

Kansas adopted its version of the UPAA in 1988 and the Kansas UPAA controls all premarital agreements executed after July 1, 1988.¹⁰⁶ The Kansas UPAA can be found in Kansas Statutes Annotated sections 23-801 to 23-811.¹⁰⁷ The Kansas UPAA is basically identical to the original UPAA. The only clear difference is that the Kansas courts have developed a standard for evaluating the voluntariness of an agreement under the Kansas UPAA. The court will focus on the facts and circumstances surrounding both the parties’ situations when compared to each other and the circumstances leading up to the signing of the agreement.¹⁰⁸

14. *Maine*

Maine adopted a version of the UPAA in 1987 and it applies to all premarital agreements executed after September 28,

¹⁰² *Shanks*, 758 N.W.2d at 512.

¹⁰³ *In re Marriage of Spiegel*, 553 N.W.2d 309, 318 (Iowa 1996).

¹⁰⁴ *Id.* at 514.

¹⁰⁵ IOWA CODE ANN. § 596.8(3) (West 2009).

¹⁰⁶ KAN. STAT. ANN. ch. 23, art. 8, Refs. & Annos. (2009); *Weber v. Weber*, et al, 2006 WL 2661194 (Kan. App.).

¹⁰⁷ KAN. STAT. ANN. § 23-801 to 23-811 (2009).

¹⁰⁸ *In re Estate of Cobb*, 2004 WL 1443913 (Kan. Ct. App.).

1987.¹⁰⁹ The Maine UPAA is located in 19-A Maine Revised Statutes Annotated sections 601 to 611.¹¹⁰ The Maine UPAA is basically the same as the original UPAA with a few variations. Maine adds to the language in section 1 of the original UPAA, that the definitions of “premarital agreement” and “property” might mean something else if the context indicates that they should.¹¹¹ Thus the Maine legislature allows for the potential that the terms as defined in the statute could actually have a different meaning based on the context in which they are used. This seems to give the parties to a premarital agreement a little more leeway with which they can use those terms. Maine also added a new section that is not otherwise included in the original UPAA. Maine’s section 606 provides that a valid premarital agreement is void 18 months after the parties to the agreement become biological or adoptive parents or guardians of a minor; however, the agreement will still be valid if during the 18 month period the parties sign a written amendment to the agreement either stating that the agreement shall remain in effect or changing the agreement.¹¹² This section does not apply to agreements executed on or after October 1, 1993.¹¹³ The state of Maine seems to have been trying to protect the interests of the future children of the couple as well as the couple’s changing interests once a child is brought into the marriage.

15. *Montana*

Montana chose to adopt the UPAA in 1987 and it can be found in the Montana Code Annotated sections 40-2-601 to 40-2-610.¹¹⁴ A comparison of the two acts indicates that the Montana legislature adopted the original UPAA in its entirety with no variation between the two acts.¹¹⁵

¹⁰⁹ *In re Estate of Martin*, 938 A.2d 812, 818 (Maine 2008).

¹¹⁰ 19A ME. REV. STAT. ANN. §§ 601 to 611 (2008).

¹¹¹ 19-A ME. REV. STAT. ANN. § 602 (2008).

¹¹² 19-A ME REV. STAT. ANN. § 606 (2008).

¹¹³ *Id.*

¹¹⁴ MONT. CODE ANN. §§ 42-2-601 to 40-2-610 (2009).

¹¹⁵ *Id.*; UNIF. PREMARITAL AGREEMENT ACT §§ 1-13 (2009).

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16. *Nebraska*

Nebraska adopted the UPAA in 1994 and it governs premarital agreements executed on or after July 16, 1994.¹¹⁶ The Nebraska UPAA is contained in the Nebraska Revised Statutes of 1943 section 42-1001 to 42-1011.¹¹⁷ The Nebraska legislature also appears to have adopted the original UPAA as its own UPAA. There are no differences between the model and Nebraska acts.

17. *Nevada*

The Nevada legislature adopted the UPAA in 1989 and the statute applies to all premarital agreements executed on or after October 1, 1989.¹¹⁸ The Nevada UPAA is located in Nevada Revised Statutes Annotated sections 123A.010 to 123A.100.¹¹⁹ The Nevada UPAA varies from the original UPAA in a few ways. In the Nevada UPAA the language “unless the context otherwise requires” has been added before the definitions of premarital agreement and property in section 123A.030.¹²⁰ As described in the section on the state of Maine, this allows for the possibility that these terms could mean more than what is specifically laid out in the Act itself.¹²¹ Another variation between the two Acts is that in section 123A.050(1)(d) of the Nevada Act the terms “alimony” and “maintenance” are added to the provision on the modification or elimination of spousal support.¹²² The addition of these terms to the Act’s language helps to make sure that any type of spousal support is covered by the provision. The Nevada UPAA allows an agreement to be found unenforceable if the agreement was not voluntarily entered into; the agreement is unconscionable; the party was not provided a fair and reasonable disclosure; or the party did not voluntarily and expressly waive the disclosure.¹²³ These are the only changes that the Nevada legislature enacted from the original UPAA.

¹¹⁶ *Edwards v. Edwards*, 744 N.W.2d 243, 253 (Neb. Ct. App. 2008).

¹¹⁷ NEB. REV. STAT. ANN. § 42-1001 to 42-1011 (2009).

¹¹⁸ *Kantor v. Kantor*, 8 P.3d 825, 829 (Nev. 2000).

¹¹⁹ NEV. REV. STAT. ANN. §§ 123A.010 to 123A.100 (West 2009).

¹²⁰ NEV. REV. STAT. ANN. § 123A.030 (West 2009).

¹²¹ *See supra* text at note 107.

¹²² NEV. REV. STAT. ANN. § 123A.050(1)(d) (West 2009).

¹²³ NEV. REV. STAT. ANN. § 123A.080(1)(a)-(c)(2) (West 2009).

18. *New Jersey*

New Jersey adopted the UPAA in 1988 and New Jersey's UPAA applies to all premarital agreements executed the "90th day after" August 5, 1988.¹²⁴ The New Jersey UPAA is located in New Jersey Statutes Annotated sections 37:2-31 to 37:2-41.¹²⁵ The New Jersey legislature has made changes to its own original version of the UPAA, and now the statute is titled "Uniform Premarital and Pre-Civil Union Agreement Act."¹²⁶

The New Jersey legislature changed the definitions included in section 37:2-32: the term has been changed from "premarital agreement" to "premarital or pre-civil union agreement," which is defined as "an agreement between prospective spouses or partners in a civil union couple made in contemplation of marriage or a civil union and to be effective upon marriage or upon the parties establishing a civil union."¹²⁷ This is a significant difference from the original UPAA and most of the other states that have chosen to adopt a version of the UPAA, because it gives same-sex couples some of the same rights available to married couples. The New Jersey legislature also chose to define unconscionability within the text of the statute; Section 37:2-32(c) defines an unconscionable agreement as an agreement:

either due to a lack of property or unemployability: (1) which would render a spouse or partner in a civil union couple without means of reasonable support; (2) which would make a spouse or partner in a civil union couple a public charge; or (3) which would provide a standard of living far below that which was enjoyed before the marriage or civil union.¹²⁸

The New Jersey Act requires more formalities in the execution of a valid agreement than the original UPAA. New Jersey states that the agreement must not only be in writing, signed by both parties, and acknowledged; there must also be a statement of assets attached to the agreement.¹²⁹ This basically guarantees that there will be a fair and reasonable disclosure of the parties' financial information.

¹²⁴ N.J. STAT. ANN. tit. 37, ch. 2, art. 5, Refs. & Annos. (West 2009).

¹²⁵ N.J. STAT. ANN. §§ 37:2-31 to 37:2-41 (West 2009).

¹²⁶ N.J. STAT. ANN. § 37:2-31 (West 2009).

¹²⁷ N.J. STAT. ANN. § 37:2-32(a) (West 2009).

¹²⁸ N.J. STAT. ANN. § 37:2-32(c) (West 2009).

¹²⁹ N.J. STAT. ANN. § 37:2-33 (West 2009).

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New Jersey's section 37:2-34 changes a small but significant aspect of what the parties to a premarital or pre-civil union agreement can contract about. The legislature chose to delete the language "or a statute imposing a criminal penalty" from the section of the original UPAA, stating that parties can contract about any other matter not listed in that section as long as it does not violate public policy or a criminal statute.¹³⁰

Under the enforcement section of the New Jersey Act there have also been changes made from the original UPAA. Section 37:2-38 specifically states in the opening paragraph that it is the burden of the party seeking to have the agreement be deemed unenforceable to prove that it is unenforceable.¹³¹ The same section also specifies that the standard of proof necessary to show the agreement is unenforceable is "clear and convincing evidence."¹³² The majority of other states and the original UPAA do not specifically list such a standard in the section of enforcement, thereby seemingly giving the courts more discretion in their determination. Another change in the enforcement section is that the New Jersey Act requires "full and fair disclosure" and not just "fair and reasonable disclosure" as required in the original UPAA.¹³³ This is clearly a higher standard of disclosure than the original UPAA. The New Jersey Act also takes into account whether the party against whom enforcement is sought had consulted with independent legal counsel or voluntarily and expressly waived, in writing, the right to consult with the legal counsel.¹³⁴ Thus while New Jersey adopted the original UPAA, the many changes and additions to its text over the years makes the New Jersey Act very different from the original UPAA.

19. *New Mexico*

New Mexico's legislature chose to adopt the UPAA in 1995, and to apply the Act to all premarital agreements executed on or

¹³⁰ N.J. STAT. ANN. § 37:2-34(h) (West 2009); UNIF. PREMARITAL AGREEMENT ACT § 3(a)(8) (2009).

¹³¹ N.J. STAT. ANN. § 37:2-38 (West 2009).

¹³² *Id.*

¹³³ N.J. STAT. ANN. § 37:2-38(c)(1) (2009); UNIF. PREMARITAL AGREEMENT ACT § 6(a)(2)(i) (2009).

¹³⁴ N.J. STAT. ANN. § 37:2-38(c)(4) (West 2009).

before July 1, 1995.¹³⁵ The New Mexico UPAA is located in New Mexico Statutes Annotated sections 40-3A-1 to 40-3A-10.¹³⁶ New Mexico's UPAA contains several differences from the original UPAA. The first change can be found in section 40-3A-3 of the New Mexico Act, which provides that the parties to a premarital agreement must not only have the agreement in writing and signed by both parties, the parties must also get the agreement acknowledged in New Mexico.¹³⁷ New Mexico has also changed what can be contracted about in a premarital agreement. The New Mexico legislature removed the section providing for the modification or elimination of spousal support in a premarital agreement, and instead added in section 40-3A-4(B) that "a premarital agreement may not adversely affect the right of a child or spouse to support, a party's right to child custody or visitation, a party's choice of abode or a party's freedom to pursue career opportunities."¹³⁸ This provision is much more restrictive of what can be contracted about in a premarital agreement than has been seen in the previous states covered. New Mexico seems concerned with protecting the rights of the parties during the marriage and after more than some other states. New Mexico also eliminated under section 40-3A-4(A)(7) the language "or a statute imposing a criminal penalty," thus providing only that the matters contracted about cannot violate public policy.¹³⁹ New Mexico's UPAA also contains some changes about when an agreement is enforceable. New Mexico removed the subsection (b) that is found in the enforcement section of the original UPAA, which applied to spousal support.¹⁴⁰ This section would no longer apply in New Mexico because of the changes made in the "Content" section stating that spousal support cannot be adversely affected by a premarital agreement anyway. New Mexico also provided in the last subsection of section 40-3A-7 that both voluntariness and unconscionability are issues

¹³⁵ N.M. STAT. ANN. ch. 40, art. 3A, Refs. & Annos. (West 2009).

¹³⁶ N.M. STAT. ANN. § 40-3A-1 to 40-3A-10 (West 2009).

¹³⁷ N.M. STAT. ANN. § 40-3A-3 (West 2009).

¹³⁸ N.M. STAT. ANN. § 40-3A-4(B) (West 2009).

¹³⁹ N.M. STAT. ANN. § 40-3A-4(A)(7) (West 2009).

¹⁴⁰ N.M. STAT. ANN. § 40-3A-7 (West 2009); UNIF. PREMARITAL AGREEMENT ACT § 6(b) (2009).

that shall be decided by the court as a matter of law.¹⁴¹ The original UPAA and other states have not included voluntariness in this section. While New Mexico maintained a lot of the original UPAA in its own act, it also made changes that impact the premarital agreements in its state differently than the original UPAA.

20. *North Carolina*

North Carolina adopted the UPAA in 1987 and it became effective July 1, 1987.¹⁴² North Carolina's Act is located in North Carolina General Statutes Annotated sections 52B-1 to 52B-11.¹⁴³ The North Carolina legislature has changed very little about the original UPAA in its own Act. North Carolina has not changed anything in the actual statutory language about what a premarital agreement's content can be, but the courts have made some clarifications about what is allowed under the North Carolina UPAA. The court in *Stewart v. Stewart* said that retirement accounts are "property" within the definition of North Carolina's UPAA, and the parties to a premarital agreement can therefore, contract as to their retirement accounts.¹⁴⁴ The courts have also held that professional licenses acquired during marriage were valid matters of a premarital agreement under North Carolina's UPAA.¹⁴⁵ The only change that North Carolina made to the actual UPAA is language found in section 52B-7(b) under Enforcement. This subsection adds to the language of the original UPAA by stating that before a court can order support, because, a provision of a premarital agreement that modifies or eliminates spousal support and thus causes a party to the agreement to qualify for public assistance at the time of the separation or divorce, the court must determine that the party for whom support is ordered is a "dependent spouse" under North Carolina General Statutes section 50-16.1A, and that the requirements found in North Carolina General Statutes section 50-16.2A regarding post separation support or North Carolina General Statutes section

¹⁴¹ N.M. STAT. ANN. § 40-3A-7(B) (West 2009).

¹⁴² *Muchmore v. Trask*, 666 S.E.2d 667, 670 (N.C. Ct. App. 2008).

¹⁴³ N.C. GEN. STAT. ANN. § 52B-1 to 52B-11 (West 2009).

¹⁴⁴ *Stewart v. Stewart*, 541 S.E.2d 209, 216 (N.C. Ct. App. 2000).

¹⁴⁵ *Id.* at 217.

50-16.3A regarding alimony have been met.¹⁴⁶ This change, while a small alteration to the overall UPAA, could have significant ramifications for a party to a premarital agreement.

21. *North Dakota*

North Dakota adopted the UPAA in 1985 and that statute is located in North Dakota Century Code sections 14-03.1-01 to 14-03.1-09.¹⁴⁷ North Dakota made several changes to the original UPAA when it enacted its own version. The first change can be found in section 14-03.1-01 of North Dakota's UPAA where the term "notice" is defined as "a person has notice of a fact if the person has knowledge of it, receives notification of it, or has reason to know that it exists from the facts and circumstances known to the person."¹⁴⁸ This term is not defined anywhere in the original UPAA or any other state's UPAA. Another difference is located in section 14-03.1-02, which states that a premarital agreement must be a document that is signed by both of the parties; this is only slightly different that the original UPAA which requires that the premarital agreement be in writing and signed by both parties.¹⁴⁹ This change is mostly a difference in language being used to say the same thing, the agreement must be signed and it must be in some written form (such as a document). There are also a few other wording changes in the enforcement section of the North Dakota UPAA, but the overall meaning and implication does not change.¹⁵⁰ The final change, and probably the most significant one, is in the form of an additional section being added to the North Dakota Act. In section 14-03.1-07 of the North Dakota UPAA the courts are given three possible options of handling unconscionable provisions of a premarital agreement (1) the court may refuse the whole agreement, (2) the court may choose to enforce the agreement without the unconscionable provisions, or (3) the court may limit the application of the unconscionable provision to prevent the unconscionable result.¹⁵¹

¹⁴⁶ N.C. GEN. STAT. ANN. § 52-7(b) (West 2009).

¹⁴⁷ N.D. CENT. CODE §§ 14-03.1-01 to 14-03.1-09 (2008).

¹⁴⁸ N.D. CENT. CODE § 14-03.1-01 (2008).

¹⁴⁹ N.D. CENT. CODE § 14-03.1-02 (2008); UNIF. PREMARITAL AGREEMENT ACT § 2 (2009).

¹⁵⁰ N.D. CENT. CODE § 14-03.1-06 (2008).

¹⁵¹ N.D. CENT. CODE § 14-03.1-07 (2008).

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Other than these mostly small changes, the North Dakota legislature chose to adopt the language of the original UPAA.

22. *Oregon*

Oregon's legislature adopted the UPAA in 1987 and applied it to all premarital agreements executed on or after January 1, 1988.¹⁵² The Oregon UPAA is found in Oregon Revised Statutes sections 108.700 to 108.740.¹⁵³ The Oregon UPAA is virtually identical to the original UPAA that was enacted by the National Conference. Oregon not only recognizes the validity of premarital agreements, the state also favors the use of them.¹⁵⁴

23. *Rhode Island*

Rhode Island chose to adopt the UPAA in 1987 and applied the new statute to premarital agreements executed on or after July 1, 1987.¹⁵⁵ Rhode Island's UPAA can be found in Rhode Island General Laws sections 15-17-1 to 15-17-11.¹⁵⁶ When the Rhode Island legislature enacted the UPAA it clearly evidenced its intent to preserve the validity of these agreements and to maintain the integrity of the agreements.¹⁵⁷ Rhode Island made very few changes from the original UPAA when it enacted its UPAA. All of the changes occur in the Enforcement section. The first change is an "or" to an "and" in section 15-17-6(a)(1), thus changing the section to say that an agreement is not enforceable if it was not executed voluntarily and the agreement was unconscionable.¹⁵⁸ While this change may seem small, its impact is huge; under Rhode Island a party trying to prove that an agreement is unenforceable must prove both that the agreement was not entered into voluntarily and that the agreement was unconscionable when it was executed.¹⁵⁹ In *Penhallow v. Penhallow*, the Court held that the unconscionable agreement was valid

¹⁵² OR. REV. STAT. tit. 11, ch. 108, Refs. & Annos. (2009).

¹⁵³ OR. REV. STAT. §§ 108.700 to 108.740 (2009).

¹⁵⁴ *In re Marriage of Bowers*, 922 P.2d 722, 724 (Or. Ct. App. 1996).

¹⁵⁵ R.I. GEN. LAWS tit. 15, ch. 17, Refs. & Annos. (2009).

¹⁵⁶ R.I. Gen. Laws. §§ .

¹⁵⁷ *Marsocci v. Marsocci*, 911 A.2d 690, 696 (R.I. 2006).

¹⁵⁸ R.I. GEN. LAWS § 15-17-6(a)(1) (2009).

¹⁵⁹ *Marsocci*, 911 A.2d at 696-97; *Penhallow v. Penhallow*, 649 A.2d 1016, 1021-22 (R.I. 1994).

because the husband had signed the agreement voluntarily.¹⁶⁰ In the original UPAA and all other states an agreement not being voluntary is sufficient grounds to have the agreement be deemed invalid.¹⁶¹

Another change to the Rhode Island UPAA is that the legislature inserted a subsection (b) in section 15-17-6 which states that the burden of proof is on the party trying to have the agreement declared unenforceable and that party must prove this by “clear and convincing evidence.”¹⁶² This subsection provides a definite standard for the court to use to measure whether the party has met his or her burden of proof. With these two changes, the Rhode Island legislature has made it harder for the person against whom enforcement is being sought to have the agreement be declared unenforceable.

24. *South Dakota*

South Dakota adopted the UPAA in 1989.¹⁶³ South Dakota’s UPAA is located in South Dakota Codified Laws sections 25-2-16 to 25-2-26.¹⁶⁴ When the South Dakota legislature created its own version, it made several changes to the original UPAA. The first change found in the South Dakota Act is in section 25-2-17, which states that a premarital agreement “shall” be in writing and signed by both parties.¹⁶⁵ The original UPAA used the term “must”; therefore, the South Dakota UPAA chose to use a word that has less force than the original UPAA.¹⁶⁶ Nevertheless, courts in South Dakota still require that the agreement be in writing to be enforceable, thus the South Dakota UPAA has the same effect as the original UPAA.¹⁶⁷ The South Dakota legislature also chose to delete from its version of the UPAA the language specifically providing for the modification or elimination of spousal support in a premarital agreement.¹⁶⁸ The Court in

¹⁶⁰ *Penhallow v. Penhallow*, 649 A.2d at 1016.

¹⁶¹ UNIF. PREMARITAL AGREEMENT ACT § 6(a) (2009).

¹⁶² R.I. GEN. LAWS § 15-17-6(b) (2009).

¹⁶³ *Sanford v. Sanford*, 694 N.W.2d 283, 288 (S.D. 2005).

¹⁶⁴ S.D. CODIFIED LAWS §§ 25-2-16 to 25-2-26 (2009).

¹⁶⁵ S.D. CODIFIED LAWS § 25-2-17 (2009).

¹⁶⁶ UNIF. PREMARITAL AGREEMENT ACT § 2 (2009).

¹⁶⁷ *Sanford*, 694 N.W.2d at 288.

¹⁶⁸ S.D. CODIFIED LAWS § 25-2-18 (2009).

Sanford v. Sanford stated that courts must presume that the legislature acted “purposefully” when it excluded the right to modify or eliminate spousal rights from its list of possible things that can be contracted about in a premarital agreement.¹⁶⁹ The last change from the original UPAA is the deletion of the subsection (b), which deals with spousal support, in the Enforcement section.¹⁷⁰

25. Texas

Texas chose to adopt a version of the UPAA in 1997 and applies it to all premarital agreements that are executed on or after April 17, 1997.¹⁷¹ The Texas UPAA is found at the Vernon’s Texas Statutes and Codes Annotated sections 4.001 to 4.010.¹⁷² Most of the changes that have been implemented in the Texas UPAA are only small changes to phrasing, such as “on separation” for “upon separation” and “the agreement” for “it.”¹⁷³ The two most significant changes to the Texas UPAA are in the Enforcement section. The first is the removal of the subsection (b) that is in the original UPAA, which allows for a court to alter a provision about spousal support if the provision allows the party to be eligible for public assistance.¹⁷⁴ This removal indicates that Texas does not allow the court to change a premarital agreement just because it results in a party’s eligibility for public assistance. The other change is the addition of subsection (c) to section 4.006 of the Texas Act, which states that “the remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.”¹⁷⁵ Texas used this subsection to expressly limit the ways that a premarital agreement can be proved to be invalid or valid. The Texas legislature mostly made minor changes to the original UPAA when

¹⁶⁹ *Sanford*, 694 N.W.2d at 289.

¹⁷⁰ S.D. CODIFIED LAWS § 25-2-21 (2009); UNIF. PREMARITAL AGREEMENT ACT § 6(b) (2009).

¹⁷¹ TEX. REV. CIV. STAT. ANN. tit. 1, subt. B, ch.4, subch. A, Refs. & Annos. (Vernon 2009).

¹⁷² *Id.*

¹⁷³ UNIF. PREMARITAL AGREEMENT ACT § 2 & 3(a)(3) (2009); TEX. REV. CIV. STAT. ANN. § 4.002 & 4.003(a)(3) (2009).

¹⁷⁴ UNIF. PREMARITAL AGREEMENT ACT § 6(b) (2009); TEX. REV. CIV. STAT. ANN. § 4.006 (2009).

¹⁷⁵ TEX. REV. CIV. STAT. ANN. § 4.006(c) (2009).

constructing its version; however, the last two changes are significant.

26. *Utah*

Utah's legislature adopted the UPAA in 1994.¹⁷⁶ The UPAA in Utah applies to all premarital agreements that are executed on or after May 2, 1994.¹⁷⁷ Utah's UPAA is located in Utah Code sections 30-8-1 to 30-8-9.¹⁷⁸

The Utah legislature made a few changes from the original UPAA as to what can be contracted about in a premarital agreement. The first change is the removal of the language from the original UPAA allowing parties to a premarital agreement to contract about the making of a will, trust or other arrangement.¹⁷⁹ The Utah legislature seems to be saying that a will, trust or other instrument is not a permissible issue for a premarital agreement. Another change is the addition of language to the subsection pertaining to the choice of law governing the agreement. Utah added that the parties can contract about this subject but that "a court of competent jurisdiction may apply the law of the legal domicile of either party, if it is fair and equitable."¹⁸⁰ The last change under the Content section of Utah's UPAA is that subsection (2) provides that in addition to the right to child support not being adversely affected by a premarital agreement, the medical insurance, the health and medical provider expenses, and the child-care coverage cannot be affected by such an agreement.¹⁸¹ This offers more protection to the child in a premarital agreement.

The next variations from the original UPAA are found in the Enforcement section of Utah's UPAA. The Utah legislature chose to use the term "fraudulent" rather than "unconscionable" throughout section 30-8-6.¹⁸² By substituting these terms, Utah appears to have created a different standard for its premarital

¹⁷⁶ UTAH CODE ANN. tit. 30, ch. 8, Refs. & Annos. (2009).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ UNIF. PREMARITAL AGREEMENT ACT § 3(a)(5) (2009); UTAH CODE ANN. § 30-8-4 (2008).

¹⁸⁰ UTAH CODE ANN. § 30-8-4(1)(f) (2008).

¹⁸¹ UTAH CODE ANN. § 30-8-4(2) (2008).

¹⁸² UTAH CODE ANN. §30-8-6 (2008).

agreements than the original UPAA or any other state. However, in practice it does not appear that there has been litigation concerning this issue, so it is still unclear how the Utah courts will treat this standard in comparison to the original UPAA standard. The last variation from the original UPAA is that Utah allows for the possibility that “fair and reasonable disclosure” is not possible, by adding the phrase “insofar as was possible” to the section requiring fair and reasonable disclosure.¹⁸³

27. *Virginia*

Virginia adopted the UPAA in 1985 and applied the Act to all premarital agreements executed on or after July 1, 1986.¹⁸⁴ The Virginia UPAA is located in Virginia Code Annotated sections 20-147 to 20-155.¹⁸⁵ The Virginia legislatures made some changes to the structure of the original UPAA when it enacted its own version, but the language except where noted in this section is the same. The first change in the language from the original UPAA is found in section 20-150(4) of the Virginia UPAA, the phrase “modification or elimination of” has been removed and simply “Spousal support” is left.¹⁸⁶ Also, the UPAA provision which prohibited a premarital agreement from adversely affecting child support, has been deleted from the Virginia UPAA.¹⁸⁷ This seems to indicate the couples in Virginia can contract about child support in their premarital agreements. The last few changes in the Virginia UPAA are found in the Enforcement section. In section 20-151(A)(2), there has been a subpart removed that is in the original UPAA, which provides for a finding that the party against whom enforcement is sought did not or reasonably could not have obtained the adequate knowledge of the financial information of the other party.¹⁸⁸ This indicates that a premarital agreement in Virginia can be held to be unenforceable because it is unconscionable and there was not adequate dis-

¹⁸³ UTAH CODE ANN. § 30-8-6(1)(b)(i) (2008).

¹⁸⁴ VA. CODE ANN., tit. 20, ch. 8, Refs. & Annos. (2009).

¹⁸⁵ *Id.*

¹⁸⁶ VA. CODE ANN. § 20-150(4) (2008).

¹⁸⁷ VA. CODE ANN. § 20-150 (2008); UNIF. PREMARITAL AGREEMENT ACT § 3(b) (2009).

¹⁸⁸ VA. CODE ANN. § 20-151(A)(2) (2008); UNIF. PREMARITAL AGREEMENT ACT § 6(a)(2)(iii) (2009).

closure, even if the party could have obtained that knowledge otherwise. The last change that the Virginia legislature made to the original UPAA in its adoption was the addition of a statement to section 20-151(B), which states that “[r]ecitations in the agreement shall create a prima facie case that they are factually correct.”¹⁸⁹

Conclusion

The UPAA is an act that was created to provide some level of certainty for those couples who wish to enter into a premarital agreement. The states that have chosen to adopt the UPAA have done so in an effort to provide uniformity in the enforcement of the premarital agreements executed in their states. The states have altered the UPAA in a variety of ways, from applying it to same-sex marriages to prohibiting the provisions that relate to spousal support. The most significant variations appear in New Jersey and the District of Columbia, which apply the UPAA to same sex couples. These states have provided same sex couples with the protection of being able to contract as to their rights upon the termination of their relationships. By including same sex couples in UPAA, these states are recognizing that same sex couples and married couples face similar issues when preparing to enter into these types of relationships. There have also been wording changes in a variety of states that appear on their face to be significant variations from the original UPAA; however, as indicated within this article, many of these changes have no significant impact on the states adoption of the UPAA. It is clear that no matter what changes a state has implemented in its adoption of the original UPAA, the original UPAA has had a great deal of impact on the states choosing to adopt its provisions.

Amberlynn Curry

¹⁸⁹ VA. CODE ANN. § 20-151(B) (2008).

