WEST VIRGINIA CODE CHAPTER 48 ARTICLE 1A

WV Legislature

§48-1A-101. Definitions.

As used in this article:

(a) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage and includes the definition of the term prenuptial agreement as set forth in §48-1-203 of this code.

(b) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property including income and earnings.

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§48-1A-201. Formalities.

A premarital agreement must be in writing and signed by both parties and contain an acknowledgement that both parties have had an opportunity to consult with separate legal counsel. It is enforceable without consideration.

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§48-1A-301. Content.

(a) Parties to a premarital agreement may contract with respect to:

(1) The rights and obligations of each of the parties in any of the property of either 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 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;

(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.

(b) The right of a child to support may not be adversely affected by premarital agreement.

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§48-1A-401. Effect of marriage.

A premarital agreement becomes effective upon marriage.

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§48-1A-501. Amendment; revocation.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement, or the revocation, is enforceable without consideration.

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§48-1A-601. Enforcement.

(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;

(2) Either party was under the age of 18 when the marriage occurred; or

(3) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(A) Was not provided adequate financial disclosures of the other party as set forth in subsection (b) of this section;

(B) 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

(C) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) A party has adequate financial disclosure under this section if the party:

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

(2) Expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(3) Has adequate knowledge, or a reasonable basis for having adequate knowledge, of the information described in subdivision (1) of this section.

(c) 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, the family court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(d) A court may refuse to enforce a term of a premarital agreement if, in the context of the agreement taken as a whole:

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

(2) Enforcement of the term would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.

(e) The issues of unconscionability of a premarital agreement or substantial hardship shall

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be decided by the family court as a matter of law.

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§48-1A-701. Unenforceable terms.

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

(1) Adversely affects a child's right to support;

(2) Limits or restricts a remedy available to a victim of domestic violence under law of this state;

(3) Purports to modify the grounds for a court-decreed separation or marital dissolution available under the law of this state; or

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

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

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§48-1A-801. Enforcement; void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

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§48-1A-901. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

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§48-1A-1001. Application; construction; and effective date.

(a) This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

(b) This article applies to premarital agreements signed on or after July 1, 2023.

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§48-1A-1101. Short title.

This article may be cited as the "Uniform Premarital Agreement Act."

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