

Why States Should Adopt the Uniform Premarital and Marital Agreements Act (2012)

Nearly every state has laws addressing the creation and enforcement of divorce-focused premarital agreements, but the standards for regulating those agreements vary greatly from state to state. At the same time, state law regarding enforcement of agreements has been far less settled and consistent. Some states have neither case-law nor legislation addressing the creation or enforceability of marital agreements, while other states have enacted varied approaches to guide courts. When applied to both premarital and marital agreements, these discordant standards have created conflicts within the law and uncertainty about enforcement as couples move from state to state.

In today's mobile society, standardization of the rules that govern when such agreements are enforceable is needed. The **Uniform Premarital and Marital Agreements Act (UPMAA)** establishes procedural and substantive safeguards for marital agreements, and unifies those safeguards with those for premarital agreements. The UPMAA clarifies and modernizes largely divergent state laws and creates a harmonized and uniform approach to premarital and marital agreements.

Among its attributes, the UPMAA:

- Requires both premarital agreements and marital agreements to be in writing and declares them to be enforceable without consideration, thereby modernizing existing state law;
- Offers couples a flexible framework for premarital and marital agreements that promotes responsible planning and informed decision making, and encourages prospective spouses to consider in advance a wide spectrum of issues that may affect their marriage;
- Provides courts in every state a framework for determining an agreement's validity, regardless of where it was executed;
- Permits nonenforcement of agreements found to be unconscionable at the time of signing by providing that unconscionability and failure of disclosure are *alternative* grounds for refusing to enforce an agreement, each of them adequate on its own;
- Bars enforcement of an agreement entered into involuntarily or as the result of duress or that limits remedies available to a party for domestic violence; and
- Affirms traditional principles of choice of law and conflict of laws in determining the validity and meaning of premarital and marital agreements.