



UNIFORM PREMARITAL AGREEMENT ACT

W.Va. Code § 48-1A-101 to 1101

FORMALITIES

W.Va. Code § 48-1A-201

- ✓ In writing signed by both parties
- ✓ Acknowledgement – Opportunity to consult with separate, legal counsel

CONTENT

W.Va. Code § 48-1A-302

- ✓ Rights and Obligations to Property whenever and wherever acquired
- ✓ Right to Manage & Control Property (sell, buy, transfer, lease, encumber, etc.)
- ✓ Disposition of Property upon divorce, separation, death or any other event
- ✓ Modification/Elimination of Spousal Support
- ✓ Creation of a will, trust or other arrangement to carry out agreement
- ✓ Choice of Law
- ✓ Any other matters not violating public policy or criminal statute

Applicability

Premarital Agreements signed on or after:

July 1, 2023

Consideration

NOT required for enforceability
(includes amendments/revocations)

Effective Date Upon Marriage

Unenforceable Terms

W.Va. Code § 48-1A-701

- ✗ Adverse to Child Support
- ✗ Restrictions to DV Remedies
- ✗ Modifying grounds for divorce or legal separation
- ✗ Penalties for initiating divorce or legal separation
- ? Custodial Responsibility
(not binding on the Court)



Statute of Limitations (if applicable)

Tolled during parties' marriage

W.Va. Code § 48-1A-901

Equitable defenses (laches, estoppel) are available to limit time for enforcement

Amendment/Revocation

W.Va. Code § 48-1A-501

Premarital Agreement may be amended/revoked after marriage by:

- ✓ Written Agreement
- ✓ Signed by Both Parties
- ✓ Enforceable without consideration

Void Marriages

W.Va. Code § 48-1A-701

Agreement enforceable only to extent necessary to avoid inequitable result



“PREMARITAL AGREEMENT” DEFINED

W.Va. Code § 48-1A-101(b)

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 W.Va. Code § 48-1-203.



“PROPERTY” DEFINED

W.Va. Code § 48-1A-101(b)

An interest, present or future, legal or equitable, vested or contingent, in real or personal property including income & earnings



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ENFORCEMENT



W.Va. Code § 48-1A-601

Entire Agreement is **NOT** enforceable if:

- ☐ Not executed voluntarily; **OR**
- ☐ Either party under age of 18 when marriage occurred; **OR**
- ☐ Agreement **unconscionable** when executed **AND**
- ☐ Before execution of agreement, that party did not receive “adequate financial disclosure”

Court may **invalidate a term** if in the context of the agreement taken as a whole:

- Term was **unconscionable at time of signing**; **OR**
- 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.

“Adequate Financial Disclosures”

W.Va. Code § 48-1A-601(b)

Actual Disclosure

a reasonably accurate description and good-faith estimate of value of the party's property, liabilities, and income

Waiver

- ✓ Express, voluntary waiver of right to receive any disclosure beyond disclosure provided
- ✓ Signed separate writing

Adequate Knowledge

Has adequate knowledge, or a reasonable basis for having adequate knowledge, of the value of property, liabilities, and income of the other party.

SPOUSAL SUPPORT – PUBLIC ASSISTANCE EXCEPTION!

W.Va. Code § 48-1A-601(c)

If premarital agreement modifies or eliminates spousal support and it causes one party to be **eligible for support under a program of public assistance at the time of separation or divorce**, then –

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.**

BURDEN OF PROOF

W.Va. Code § 48-1A-601(a)

on party seeking to invalidate.