

THE NEBRASKA PREMARITAL AGREEMENT ACT – WHAT DOES *VOLUNTARY* REALLY MEAN?

The Nebraska Uniform Premarital Agreement Act authorizes parties contemplating marriage to contract with respect to certain matters, including their personal rights and obligations, which are not in violation of public policy or a statute imposing a criminal penalty. Such matters include, but are not limited to, the following:

- (a) 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;
- (b) 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;
- (c) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
- (d) The modification or elimination of spousal support;
- (e) The making of a will, trust, or other arrangement, to carry out the provisions of the agreement; or
- (f) The ownership rights in and disposition of the death benefit from a life insurance policy.

Once drafted, one hopes the premarital agreement will be enforceable in the event of death or dissolution of the marriage. Primarily, the courts look to two factors when determining the validity of a premarital agreement: Was the agreement entered into voluntarily and is the agreement unconscionable?

An agreement will be deemed unconscionable if a party was not provided fair and reasonable disclosure of property or financial obligations of the other party or reasonably could not have had adequate knowledge of the property or financial obligations of the other party.

Premarital agreements are often drafted and executed during times of high emotion (those months or weeks prior to a wedding for instance). Consequently, one runs the risk of having to prove the premarital agreement was signed “voluntarily”. In Nebraska, courts will consider whether there was coercion or lack of knowledge and factors such as the proximity of execution of the agreement to the wedding, surprise in the presentation of the agreement; the presence or absence of independent counsel; inequality of bargaining power; whether there was full disclosure of assets; and the parties’ understanding of the rights being waived or at least their awareness of the intent of the agreement. The party seeking to avoid a premarital agreement may prevail by establishing that the agreement was involuntary as demonstrated by a number of the factors outlined above which are uniquely probative of coercion in the premarital context, and would be relevant in establishing the involuntary nature of the agreement. *Edwards v. Edwards*, 16 Neb. App. 297 (2008).