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Domestic Relations; Uniform Premarital Agreement Act

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Domestic Relations; Uniform Premarital Agreement Act

NEV. REV. STAT. §§ 11.—, 146.— (new); §§ 115.060, 123.010, 123.259, 125.150, 125.200, 125.210, 134.005, 135.060, 201.040 (amended).

AB 296 (Committee on Judiciary); 1989 STAT. Ch. 472

Under existing law, a marriage contract¹ or judicial proceeding² governs the property³ rights of a husband and wife.⁴ Chapter 472 adopts the Uniform Premarital Agreement Act, (UPAA).⁵ Under the UPAA, a premarital agreement⁶ must be in writing, signed by both parties, and is valid without consideration.⁷ A premarital agreement is effective upon marriage and can only be amended or revoked in writing.⁸

Chapter 472 allows parties to a premarital agreement to contract concerning: (1) Rights and obligations in any property, wherever that property is located;⁹ (2) rights to control, manage, and dispose of

1. See NEV. REV. STAT. § 123.080 1 (1987) (a husband and wife cannot contract to alter their legal relationship except as to their property).

2. See *id.* §§ 125.150 (1987) (disposition of community property in divorce proceedings); 125.190 (1987) (when a cause for divorce exists, a spouse may maintain an action for permanent support without filing for divorce); 123.259 (1987) (amended by 1989 Nev. Stat. ch. 170, sec. 13, at —) (spouse or guardian of a spouse can petition for division of community property when in the best interest of both spouses, and when division would permit one spouse to qualify under state plan for assistance to the medically indigent).

3. See *id.* §§ 123.130 (1987) (separate property defined); 123.220 (1987) (community property defined).

4. See *id.* § 123.010 (1987). See also NEV. CONST. art. IV, § 31 (rights and obligations of husband and wife).

5. 1989 Nev. Stat. ch. 472, secs. 1-11, at — (enacting NEV. REV. STAT. §§ 11.—, —). See *id.* sec. 2, at — (enacting NEV. REV. STAT. § 11.—) (Chapter 472 may be cited as the UPAA). In July 1983, the National Conference of Commissioners on State Law approved the UPAA. Freed & Walker, *Family Law in the Fifty States: An Overview*, 21 FAM. L.Q. 417, 560 (1988). The American Bar Association's House of Delegates adopted the UPAA in 1984. *Id.* As of winter 1988, Arkansas, California, Hawaii, Maine, Montana, North Dakota, Oregon, Rhode Island, Texas, and Virginia have enacted the UPAA and the Act is pending in the District of Columbia, Idaho, Kansas, Massachusetts, Minnesota, Michigan, New Jersey, North Carolina, Oklahoma, Washington, and West Virginia. *Id.* Colorado adopted a Marital Agreement Act in 1986 modeled on the UPAA. *Id.* See *id.* at 417 (effect of premarital agreements upon divorce).

6. See 1989 Nev. Stat. ch. 472, sec. 4, at — (enacting NEV. REV. STAT. § 11.—) (premarital agreement means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage). See also NEV. REV. STAT. § 104.1201 3 (1987) (definition of agreement).

7. 1989 Nev. Stat. ch. 472, sec. 5, at — (enacting NEV. REV. STAT. § 11.—).

8. *Id.* secs. 7, 8, at — (enacting NEV. REV. STAT. §§ 11.—, 11.—) (consideration is not required for change or revocation of agreement).

9. See *id.* sec. 6, at — (enacting NEV. REV. STAT. § 11.—). See also *id.* sec. 4, at — (enacting NEV. REV. STAT. § 11.—) (property means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings).

property;¹⁰ (3) the transfer of property upon separation, divorce, or death;¹¹ (4) modification or elimination of alimony or support or maintenance of a spouse;¹² (5) wills or trusts;¹³ (6) receipt of life insurance benefits;¹⁴ (7) the choice of law governing the agreement;¹⁵ and (8) any other personal rights and obligations.¹⁶

A premarital agreement is not enforceable under the UPAA if the agreement was entered into involuntarily,¹⁷ the agreement is unconscionable,¹⁸ or one party did not receive a fair and reasonable disclosure of the property or financial obligations of the other party.¹⁹ A premarital agreement to a void marriage is enforceable only to the extent necessary to avoid an inequitable result.²⁰

Under Chapter 472, the statute of limitations for an action arising under a premarital agreement is tolled during the marriage of the parties.²¹ Equitable defenses, including laches and estoppel, exist to limit the time for enforcement of the agreement.²²

Under Chapter 472, the provisions of a premarital agreement supersede property declared as a homestead,²³ inheritance,²⁴ a court order dividing community property,²⁵ and probate provisions for

10. *Id.* sec. 6, at ___ (enacting NEV. REV. STAT. § 11.____) (includes right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, or encumber).

11. *Id.* (disposition of property includes occurrence or nonoccurrence of any other event).

12. *Id.* See *id.* sec. 9, at ___ (enacting NEV. REV. STAT. § 11.____) (modification or elimination permitted unless that would cause one party to require public assistance). Under Chapter 472, a premarital agreement cannot adversely affect a child's right to support. *Id.* sec. 6, at ___ (enacting NEV. REV. STAT. § 11.____).

13. *Id.* sec. 6, at ___ (enacting NEV. REV. STAT. § 11.____).

14. *Id.*

15. *Id.*

16. *Id.* The agreement cannot be in violation of any public policy or criminal statute. *Id.*

17. *Id.* sec. 9, at ___ (enacting NEV. REV. STAT. § 11.____).

18. *Id.* (court determines unconscionability as a matter of law).

19. *Id.* (a spouse not receiving a fair and reasonable disclosure must also prove that the right to receive such disclosure of the other's property was not voluntarily and expressly waived and that the aggrieved party did not, or could not have reasonably had, knowledge of other's property and obligations). See generally Freed & Walker, *Family Law in the Fifty States: An Overview*, 21 FAM. L.Q. 417 (1988) (discussing recent state court decisions regarding fraud and unconscionability in premarital agreements).

20. 1989 Nev. Stat. ch. 472, sec. 10, at ___ (enacting NEV. REV. STAT. § 11.____).

21. *Id.* sec. 11, at ___ (enacting NEV. REV. STAT. § 11.____).

22. *Id.*

23. 1989 Nev. Stat. ch. 472, sec. 17, at ___ (amending NEV. REV. STAT. § 115.060). See NEV. REV. STAT. §§ 115.010 (1987) (homestead defined and exemption not exceeding \$90,000 permitted); 115.020 (1987) (requirements for homestead declaration).

24. 1989 Nev. Stat. ch. 472, sec. 18, at ___ (amending NEV. REV. STAT. § 134.005). See also NEV. REV. STAT. §§ 134.005-.210 (1987) (governing succession of community and separate property upon death of husband or wife).

25. 1989 Nev. Stat. ch. 472, sec. 19, at ___ (amending NEV. REV. STAT. § 135.060). See NEV. REV. STAT. §§ 125.150 (1987) (disposition of community property in divorce proceedings); 125.190 (1987) (when a cause for divorce exists, a spouse may maintain an action for permanent

support of a family of a deceased person.²⁶ Under existing law, a court can issue a temporary order providing for support of a deserted spouse or child.²⁷ Under Chapter 472, the provisions of a premarital agreement do not limit the court's authority to issue a temporary order requiring support.²⁸

Chapter 472 applies to premarital agreements executed on or after October 1, 1989.²⁹ Agreements before that date are enforceable if the agreement conforms to either state common law or the provisions of the UPAA.³⁰

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support without filing for divorce); 123.259 (1987) (amended by 1989 Nev. Stat. ch. 170, sec. 2, at ___) (spouse or guardian of a spouse can petition for division of community property when in the best interest of both spouses, and when division would permit one spouse to qualify under state plan for assistance to the medically indigent).

26. 1989 Nev. Stat. ch. 472, sec. 20, at ___ (enacting NEV. REV. STAT. § 146.____). See NEV. REV. STAT. §§ 146.010-146.080 (1987) (probate provisions for support of the family of a deceased spouse leaving a surviving spouse or minor child). These provisions include a homestead exemption. *Id.*

27. NEV. REV. STAT. § 201.040 (1987) (amended by 1989 Nev. Stat. ch. 472, sec. 21, at ___).

28. 1989 Nev. Stat. ch. 472, sec. 21, at ___ (amending NEV. REV. STAT. § 201.040).

29. *Id.* sec. 22, at ___.

30. *Id.*

