Domestic Relations; Uniform Premarital Agreement Act

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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 contract or judicial proceeding governs the property rights of a husband and wife. Chapter 472 adopts the Uniform Premarital Agreement Act, (UPAA). Under the UPAA, a premarital agreement must be in writing, signed by both parties, and is valid without consideration. A premarital agreement is effective upon marriage and can only be amended or revoked in writing.

Chapter 472 allows parties to a premarital agreement to contract concerning: (1) Rights and obligations in any property, wherever that property is located; (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).
4. See id. § 123.010 (1987). See also NEV. CONST. art. IV, § 31 (rights and obligations of husband and wife).
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).

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

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

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

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

\begin{enumerate}
\item \textit{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).
\item \textit{Id.} (disposition of property includes occurrence or nonoccurrence of any other event).
\item \textit{Id.} See \textit{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. \textit{Id.} sec. 6, at ___ (enacting Nev. Rev. Stat. § 11._).
\item \textit{Id.} sec. 6, at ___ (enacting Nev. Rev. Stat. § 11._).
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.} The agreement cannot be in violation of any public policy or criminal statute. \textit{Id.}
\item \textit{Id.} sec. 9, at ___ (enacting Nev. Rev. Stat. § 11._).
\item \textit{Id.} (court determines unconscionability as a matter of law).
\item \textit{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). \textit{See generally} Freed & Walker, \textit{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).
\item \textit{Id.} sec. 11, at ___ (enacting Nev. Rev. Stat. § 11._).
\item \textit{Id.}

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

Chapter 472 applies to premarital agreements executed on or after October 1, 1989. Agreements before that date are enforceable if the agreement conforms to either state common law or the provisions of the UPAA.

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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).


29. Id. sec. 22, at _.

30. Id.