

January 1988

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### Recommended Citation

Bruce B. Barrett, *Premarital Agreements in Montana*, 49 Mont. L. Rev. (1988).  
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## PREMARITAL AGREEMENTS IN MONTANA

Bruce B. Barrett\*

### I. INTRODUCTION

Attorneys are often approached by clients, generally of two types, who seek premarital agreements.<sup>1</sup> First, older persons marrying for a second time after the death of their first spouses may seek a contract to reserve their estates for children of their first marriage.<sup>2</sup> Second, young professional couples with independent careers may also seek such agreements.<sup>3</sup> Further, the national increase in the number of divorces has motivated other couples to settle financial matters before entering into marriage.<sup>4</sup>

Attorneys found it difficult in the past to assure clients of the durability and enforceability of premarital agreements<sup>5</sup> as, before 1975, no comprehensive Montana statute expressly authorized such agreements.<sup>6</sup> Additionally, the few court decisions in Montana which addressed premarital agreements failed to rule on the ultimate question of the enforceability of such agreements.<sup>7</sup>

The Uniform Marriage and Divorce Act (UMDA), adopted by the legislature in 1975, was the first express statutory validation of premarital agreements.<sup>8</sup> This act, however, failed to address the issue of the durability and enforceability of premarital contracts. It

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1. This article does not address creation of marriage settlement agreements or cohabitation contracts such as that litigated in *Marvin v. Marvin*, 18 Cal. 3d 660, 557 P.2d 106, 134 Cal. Rptr. 815 (1976). West, *The Do's and Dots of Antenuptial Agreements*, 61-2 FLA. B.J. 47, 47 (1987).

2. Thomas, *The Tax Consequences of Antenuptial Agreements*, 32-5 PRAC. LAW. 13, 13 (1986).

3. Dulaney & Jonkel, *Premarital Contracts: An Overview of Their Content and Validity*, MONT. LAW., Sept. 1980, at 5.

4. West, *supra* note 1, at 47. See also Clark, *Antenuptial Contracts*, 50 U. COLO. L. REV. 141 (1979).

5. Note, *Gross v. Gross*, 47 OHIO ST. L.J. 235, 235-36 (1986). See also Dulaney & Jonkel, *supra* note 3, at 6.

6. In 1975 the Montana Legislature passed the Uniform Marriage and Divorce Act (UMDA) codified as MONT. CODE ANN. §§ 40-4-101 to -225 (1987). But see MONT. CODE ANN. § 40-2-301 (1987).

7. *Stefonick v. Stefonick*, 118 Mont. 486, 167 P.2d 848 (1946); *Hannon v. Hannon*, 46 Mont. 253, 127 P. 466 (1912) (upholding contract provision waiving dower); *In re Herzog's Estate*, 162 Mont. 410, 513 P.2d 9 (1973). See also Note, *The Doctrine of Incorporation by Reference: In re Herzog's Estate*, 35 MONT. L. REV. 376 (1974).

8. MONT. CODE ANN. § 40-4-202(1) (1975).

thus provided little assurance to clients who feared that their premarital agreements were not worth the paper they were written on.<sup>9</sup> In response to this uncertainty, the Montana Legislature in 1987 adopted the comprehensive Uniform Premarital Agreement Act.<sup>10</sup> Practitioners now find an entirely new situation as the 1987 act mandates enforcement of premarital agreements, in addition to encouraging their use.

This article discusses the development of Montana premarital agreement law before and following adoption of the Uniform Premarital Agreement Act. It then provides basic guidelines for practitioners to follow when drafting or challenging such agreements.

## II. MONTANA PREMARITAL AGREEMENT LAW PRIOR TO 1987

The first Montana statute expressly recognizing the validity of contracts between husband and wife was enacted in 1895.<sup>11</sup> This statute provides in part that either husband or wife may enter into any engagement or transaction with the other respecting property.<sup>12</sup> A literal reading of this statute suggests it applies only to contracts entered into *during* marriage, not before. The Montana Supreme Court, however, interpreted this and similar statutes as authorizing prospective spouses to contract with one another regarding future property rights.<sup>13</sup> But in practice, the court rarely recognized the validity of premarital agreements. When it did recognize them, the court failed to address the issue of the ultimate enforceability of premarital agreements.<sup>14</sup> In fact, the same decision which first acknowledged the validity of premarital agreements voided the actual agreement involved on policy grounds.<sup>15</sup>

This recognition of the validity of premarital agreements without a clear determination of when and how courts would enforce such agreements, led to extensive litigation. For example, in the

9. MONT. CODE ANN. § 40-4-202(1) (1975).

10. For complete text of the act with commissioner's comments see UNIF. PREMARITAL AGREEMENT ACT § 1-13, 9B U.L.A. 369-80 (1986) (codified at MONT. CODE ANN. §§ 40-2-601 to -610 (1987)).

11. MONT. CODE ANN. § 40-2-301 (1987). History: Enacted CIV. CODE § 214 (1895); re-enacted REV. CODE § 3694 (1907); re-enacted MONT. REV. CODE § 5786 (1921); CAL. CIV. CODE § 158 (1872); re-enacted MONT. REV. CODE § 5786 (1935); MONT. REV. CODE § 36-105 (1947).

12. MONT. CODE ANN. § 40-2-301 (1987).

13. *Stefonick*, 118 Mont. at 498, 167 P.2d at 854.

14. In *In re Herzog's Estate*, 162 Mont. 410, 513 P.2d 9 (1973), the Montana Supreme Court recognized a premarital agreement, and incorporated it by reference into a will. Here too, the court made no ruling as to the overall validity of the premarital agreement. *Id.* at 412, 513 P.2d at 10.

15. *Stefonick*, 118 Mont. at 500, 167 P.2d at 855.

Ohio case of *Gross v. Gross*,<sup>16</sup> a couple entered into a premarital agreement which established the amount of alimony the wife would receive at the time of separation or divorce.<sup>17</sup> The trial court granted a divorce,<sup>18</sup> and enforced the premarital agreement after concluding that the parties had entered into the agreement fairly.<sup>19</sup> The intermediate state appellate court reversed, holding that a premarital agreement should not be enforceable by a party "at fault" in the dissolution action.<sup>20</sup> The Ohio Supreme Court in turn reversed the appellate court decision and held that the premarital agreement was enforceable because it was fairly and properly formed.<sup>21</sup> The court, however, permitted the trial court to reform the alimony provision which was unconscionable as of the time of the divorce.<sup>22</sup> A number of cases follow this extensive litigatory pattern with varying results.<sup>23</sup>

The Montana Legislature adopted the UMDA in 1975, thereby joining the courts in expressly recognizing the validity of premarital agreements.<sup>24</sup> The UMDA property provisions expressly required courts to consider any premarital agreements, as well as a number of other factors, when apportioning the property of the parties in a dissolution action.<sup>25</sup> The statute, however, merely required the courts to consider such agreements, not to enforce them. The district courts, thus, retained broad discretion when apportioning the property of parties.<sup>26</sup>

16. 11 Ohio St. 3d 99, 464 N.E.2d 500 (1984), *appealed*, 23 Ohio App. 3d 172, 492 N.E.2d 476, *cert. denied*, 106 S. Ct. 1975 (1986).

17. *Gross*, 11 Ohio St. 3d at 102, 464 N.E.2d at 503.

18. *Id.*

19. *Id.*

20. *Id.* (the husband's cruelty during the marriage constituted the fault in this case).

21. *Id.* at 107, 464 N.E.2d at 508.

22. *Id.* at 107, 464 N.E.2d at 509.

23. See *Posner v. Posner*, 257 So. 2d 530 (Fla. 1972), *appealed* 315 So. 2d 175 (Fla. 1975) (involved a premarital agreement which was eventually voided by the court due to changed conditions after the marriage); *Hill v. Hill*, 356 N.W.2d 49 (Minn. Ct. App. 1984) (involved a premarital agreement which was generally upheld in spite of error in the agreement's financial disclosures, and the fact both parties were represented by the same attorney when the agreement was drawn; the agreement's waiver of the wife's maintenance, however, was found unconscionable); *Norris v. Norris*, 419 A.2d 982 (D.C. Ct. App. 1980) (involved a premarital agreement which the court failed to enforce due to lack of full disclosure and lack of a voluntary execution of the agreement by the wife); *In re Marriage of Burgess*, 138 Ill. App. 3d 13, 485 N.E.2d 504 (1985) (involved total enforcement of a premarital agreement, including its elimination of spousal maintenance, even though a change in economic fortune of the wife had occurred during the marriage).

24. MONT. CODE ANN. §§ 40-4-101 to -225 (1987).

25. MONT. CODE ANN. § 40-4-202 (1985).

26. MONT. CODE ANN. § 40-4-202(1) (1987) provides in part that the court shall "finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband

The Montana Supreme Court upheld this broad discretion in *In re Marriage of Keepers*.<sup>27</sup> *Keepers* involved a husband's appeal from a district court judgment equally dividing the assets of the parties, despite the marriage's short duration (four years) and the husband's contribution of a larger share of the pre- and post-marital property.<sup>28</sup> The Montana Supreme Court upheld the district court's equal division. The court reasoned that the factors outlined in the UMDA, including consideration of premarital agreements, were not exclusive considerations for property apportionment.<sup>29</sup> To promote and ensure an equitable division of property, the Montana Legislature<sup>30</sup> and Supreme Court<sup>31</sup> mandated only consideration of, not compliance with, premarital agreements. This uncertain situation set the stage for legislative consideration of an act mandating recognition and enforcement of premarital agreements.

### III. THE UNIFORM PREMARITAL AGREEMENT ACT

The Montana Legislature finally addressed the question of the enforceability of premarital contracts in 1987. In passing Senate Bill 225, the legislature adopted in its entirety the Uniform Premarital Agreement Act (UPAA),<sup>32</sup> thereby joining national efforts to make uniform premarital agreement laws from state to state.<sup>33</sup>

After adopting the UPAA, the legislature amended the UMDA, removing premarital agreements from the list of factors courts merely had to consider when apportioning property.<sup>34</sup> Now, when premarital agreements exist, courts must enforce them as provided in the UPAA.<sup>35</sup>

The UPAA covers premarital agreements "between prospective spouses made in contemplation of marriage and to be effective upon marriage."<sup>36</sup> The only formal requirement is that such agreements be in writing. The UPAA does not require the parties to

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or wife or both."

27. \_\_\_ Mont. \_\_\_, 691 P.2d 810 (1984).

28. *Id.* at \_\_\_, 691 P.2d at 811.

29. *Id.* at \_\_\_, 691 P.2d at 813.

30. MONT. CODE ANN. § 40-4-202(1) (1975).

31. *In re Marriage of Keepers*, \_\_\_ Mont. \_\_\_, 691 P.2d 810 (1984).

32. See MONT. CODE ANN. § 40-2-601 to -610 (1987).

33. For complete text of the Act with commissioner's comments see UNIF. PREMARITAL AGREEMENT ACT § 1-13, 9B U.L.A. 369-80 (1986). The National Conference of Commissioners on Uniform State Laws promulgated this act in 1986 and recommended it for passage by the states.

34. See MONT. CODE ANN. § 40-4-202 (1987).

35. MONT. CODE ANN. § 40-4-202(5) (1987).

36. MONT. CODE ANN. § 40-2-603(1) (1987).

give consideration for the agreements to be enforceable.<sup>37</sup> Once the parties have entered into such an enforceable premarital agreement, they are then free to amend or revoke it—again, without consideration.<sup>38</sup>

The Act authorizes agreements which extend to a broad variety of issues. The parties may contract regarding “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.”<sup>39</sup> They may contract for the disposition of property in the event of separation, marital dissolution or death. Also they may contract for elimination or provision of spousal support and for the making of a “will, trust, or other arrangement to carry out the provisions of the agreement.”<sup>40</sup> The Act further allows parties to contract for “any other matter.”<sup>41</sup> Consequently, parties seeking an enforceable premarital agreement will find that the Act allows them to contract for nearly all matters, except those expressly prohibited by the UPAA.

The Act expressly prohibits only a few provisions. The Act specifically prohibits provisions which adversely affect the right of child support<sup>42</sup> or which will eliminate or modify spousal support to such an extent that a party will be eligible for public assistance at the time of separation or dissolution.<sup>43</sup> The Act also prohibits provisions which violate public policy or provide for violation of criminal statutes.<sup>44</sup>

The critical section of the Premarital Agreement Act is the section on enforcement, which provides only two limited grounds for challenging enforceability.<sup>45</sup> First, a party may challenge the agreement’s enforceability for lack of voluntary execution.<sup>46</sup> Second, a party may challenge premarital agreements if they are unconscionable.<sup>47</sup> To challenge the unconscionability of the agreement, however, it must have been unconscionable at the time the parties executed it, as opposed to becoming unconscionable through circumstances.<sup>48</sup> Yet, proof of the agreement’s unconscio-

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37. MONT. CODE ANN. § 40-2-604 (1987).

38. MONT. CODE ANN. § 40-2-607 (1987).

39. MONT. CODE ANN. § 40-2-605(1)(a) (1987).

40. MONT. CODE ANN. § 40-2-605(1) (1987).

41. MONT. CODE ANN. § 40-2-605(1)(h) (1987).

42. MONT. CODE ANN. § 40-2-605(2) (1987).

43. MONT. CODE ANN. § 40-2-608(2) (1987).

44. MONT. CODE ANN. § 40-2-605(1)(h) (1987).

45. MONT. CODE ANN. § 40-2-608(1)(a), (b) (1987).

46. MONT. CODE ANN. § 40-2-608(1)(a) (1987).

47. MONT. CODE ANN. § 40-2-608(1)(b) (1987).

48. MONT. CODE ANN. § 40-2-608(1)(b) (1987).

nability at the time of execution will not, by itself, prevent enforcement of a premarital agreement.<sup>49</sup> The non-challenging party also must have failed to provide a "fair and reasonable disclosure of the property and financial obligations,"<sup>50</sup> unless the challenging party voluntarily signed a written waiver of any right to such disclosure.<sup>51</sup> The party seeking to prevent enforcement of an unconscionable agreement also must lack actual knowledge of the other party's property holdings and financial obligations.<sup>52</sup> These extensive UPAA requirements, which are a prerequisite to any challenge of the unconscionability of a premarital agreement, indicate that parties may now voluntarily choose to enter into unconscionable agreements, and the courts are less likely to save them from a "bad bargain."

#### IV. PRACTICE CONSIDERATIONS

##### A. *Challenges to the Enforceability of Premarital Agreements*

Now that premarital agreements are enforceable,<sup>53</sup> attorneys must develop appropriate practices for drafting agreements that will withstand challenges, and also techniques for challenging the enforceability of such agreements. Challenges based upon voluntariness may prove much more fruitful than those based on unconscionability, even though the traditional basis for challenging premarital agreements has been unconscionability.<sup>54</sup> The Act, however, strictly limits the conditions under which a party may challenge the enforceability of a premarital agreement and thereby defeat it.<sup>55</sup> Mere unfairness will not save a person from an executed premarital contract. The challenging party must prove either lack of disclosure or the existence of a waiver, and also prove lack of any actual knowledge of the other party's financial assets and obligations.<sup>56</sup> Unconscionability must be determined by the court as a matter of law.<sup>57</sup>

Courts in other jurisdictions have frequently addressed the issue of what constitutes a voluntary decision to enter into a premar-

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49. See MONT. CODE ANN. § 40-2-608(1)(b) (1987).

50. MONT. CODE ANN. § 40-2-608(1)(b)(i) (1987).

51. MONT. CODE ANN. § 40-2-608(1)(b)(ii) (1987).

52. MONT. CODE ANN. § 40-2-608(1)(b)(iii) (1987).

53. MONT. CODE ANN. § 40-2-608(1)(a), (b) (1987).

54. *Gross v. Gross*, 11 Ohio St. 3d 99, 109, 464 N.E.2d 500, 509 (1986).

55. MONT. CODE ANN. § 40-2-608(1)(b) (1987).

56. MONT. CODE ANN. § 40-2-608(1)(b) (1987).

57. MONT. CODE ANN. § 40-2-608(3) (1987).

ital agreement.<sup>58</sup> The Florida case of *Plant v. Plant*<sup>59</sup> illustrates what constitutes a voluntary agreement. In *Plant*, the groom presented a premarital agreement to the bride close to the wedding day.<sup>60</sup> Further, the bride signed the agreement without benefit of independent legal counsel and without adequate legal advice.<sup>61</sup> The court voided this premarital agreement after holding it was not voluntarily entered into by both parties.<sup>62</sup>

Another Florida case, *Lutgert v. Lutgert*,<sup>63</sup> provides a more dramatic example of what constitutes non-voluntary formation of a premarital agreement. In *Lutgert*, the husband presented the wife with the agreement less than twenty-four hours before the wedding, and after extensive plans were made, the guests invited, the honeymoon planned and the rings purchased.<sup>64</sup> The wife initially refused, but in the face of the husband's threat to cancel the wedding, the wife signed the agreement.<sup>65</sup> The wife challenged the agreement during the divorce proceeding some ten years later, and the court overturned it as a product of coercion.<sup>66</sup>

The Montana Supreme Court has also considered challenges to marital and post-marital contracts based upon involuntary formation. These cases indicate what factors may constitute a basis for challenging premarital agreements. In the 1984 case of *In re Marriage of Myers*,<sup>67</sup> the wife brought the vast majority of assets to the marriage.<sup>68</sup> The husband later separated from the wife and agreed to a reconciliation only if the wife would sign a marital property agreement giving him half interest in all marital property.<sup>69</sup> Upon dissolution, the court refused to enforce the agreement.<sup>70</sup>

The Montana Supreme Court has held that the assistance of independent counsel for each party drafting a marital agreement is a critical factor to a later determination of the voluntariness of the

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58. West, *supra* note 1, at 49.

59. 320 So. 2d 455 (Fla. Dist. Ct. App. 1975).

60. *Id.* at 457.

61. *Id.*

62. *Id.* at 457.

63. 338 So. 2d 1111 (Fla. Dist. Ct. App. 1976).

64. *Id.* at 1113-14.

65. *Id.* at 1114.

66. *Id.* at 1116-17.

67. \_\_\_ Mont. \_\_\_, 682 P.2d 718 (1984).

68. *Id.* at \_\_\_, 682 P.2d at 719.

69. *Id.* at \_\_\_, 682 P.2d at 720.

70. *Id.* at \_\_\_, 682 P.2d at 721. In voiding the agreement, the court also noted that the marriage was of short duration and that the dissolution was the husband's fifth and the wife's third. *Id.* at \_\_\_, 682 P.2d at 722.

agreement. For example, in *In re Marriage of Lawrence*,<sup>71</sup> the trial court enforced what it would normally have considered an unconscionable separation agreement,<sup>72</sup> because it found the wife had been represented by independent counsel, knew of the assets involved, and chose to overrule her counsel's advice that she could recoup more of the assets at trial than through the agreement.<sup>73</sup> The Montana Supreme Court stated it would uphold the trial court's decision because the totality of the circumstances surrounding the formation of the agreement supported the holding that no evidence of duress or coercion existed.<sup>74</sup> The wife contended that she had ignored her attorney's advice due to the husband's "threats and importunities."<sup>75</sup> The court nevertheless upheld the agreement, noting that divorces often include some trauma, but that the trauma of divorce was not enough to negate voluntariness.<sup>76</sup>

In *Winters v. Winters*,<sup>77</sup> the court discussed the level of threats required to establish involuntary entry into a marital agreement and indicated which threats were insufficient to negate voluntariness. In *Winters*, the wife discovered her husband's extramarital affair and threatened to "drag [his] lover's name through the mud" unless cash payments to the wife were included in the separation agreement.<sup>78</sup> The court upheld the agreement after holding that this threat did not vitiate the husband's consent.<sup>79</sup>

In sum, challenges to premarital agreements are likely to be most successful when the other party drafted all the terms, produced the agreement shortly before the wedding, and then gave the other party a "take it or leave it" option.<sup>80</sup> The fact that a spouse has no independent counsel also strengthens a challenge to the voluntariness of the contract.<sup>81</sup> These factors open the door for challenges, but challengers should realize both the serious implications of premarital agreements and the strong indications that courts will enforce them.<sup>82</sup>

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71. 197 Mont. 262, 642 P.2d 1043 (1982).

72. *Id.* at 265, 642 P.2d at 1045.

73. *Id.*

74. *Id.* at 270, 642 P.2d at 1047.

75. *Id.* at 271, 642 P.2d at 1048.

76. *Id.* at 273, 642 P.2d at 1049.

77. 188 Mont. 43, 610 P.2d 1165 (1980).

78. *Id.* at 45, 610 P.2d at 1167-68.

79. *Id.* at 46, 610 P.2d at 1168.

80. West, *supra* note 1, at 50.

81. See, e.g., *Lawrence*, 197 Mont. 262, 642 P.2d 1043.

82. West, *supra* note 1, at 50. MONT. CODE ANN. § 40-2-608 (1987); *Lawrence*, 197 Mont. at 273, 642 P.2d at 1049; *Winters*, 188 Mont. at 46, 610 P.2d at 1168.

### B. *Drafting Premarital Agreements to Prevent Challenges*

To insure later enforceability, attorneys should draft agreements with care. Each spouse should have independent counsel, although the act does not require it, as this may negate a later claim of involuntary formation.<sup>83</sup> A contribution by both parties to the terms of the agreement would provide further evidence of the voluntary execution of the agreement.<sup>84</sup>

Full disclosure of the parties' property and financial holdings is not required under the Act.<sup>85</sup> The Act also provides for partial disclosure of assets and liabilities, and this may meet the needs of the non-disclosing party.<sup>86</sup> Whether the parties choose full or partial disclosure, the attorney should draft detailed listings of properties and financial obligations, which may then be attached as exhibits to the agreement and signed by both parties. Additionally, if the parties opt against either full or partial disclosure, they may wish to sign a waiver of full disclosure. This waiver should be clear and concise to avoid later challenges.<sup>87</sup>

The attorney should consult available agreement checklists<sup>88</sup> and source materials containing sample contract provisions,<sup>89</sup> remembering that the new Act provides parties with a broad range of contract options<sup>90</sup> which may entail significant estate and tax consequences.<sup>91</sup> The general practitioner should thus also keep basic estate and tax aspects in mind when drafting agreements.<sup>92</sup> Certainly there will be times when outside consultation with estate or tax experts will be advisable.

Clients sometimes seek contractual provisions regarding personal aspects of their upcoming marital relationship.<sup>93</sup> These provisions may range from those providing for division of household duties, to regulation of sexual conduct. Attorneys should advise their clients that such provisions are not expressly prohibited by the Act, but that they may have little legal value.<sup>94</sup> However, there are times when discussion and clarification of these issues may

83. *Lawrence*, 197 Mont. at 273, 642 P.2d at 1043.

84. *West*, *supra* note 1, at 50.

85. MONT. CODE ANN. § 40-2-608(1)(b)(ii), (iii) (1987).

86. MONT. CODE ANN. § 40-2-608(1)(b)(ii) (1987).

87. MONT. CODE ANN. § 40-2-608(1)(b)(ii) (1987).

88. *See, e.g.*, LEGAL FORMS 2D, *Husband and Wife* § 139.11 (1985).

89. *See, e.g.*, D. PATTERSON, MONTANA FAMILY LAW PLEADING & PRACTICE FORMS AND AGREEMENTS (1986).

90. MONT. CODE ANN. §§ 40-2-601 to -610 (1987).

91. MONT. CODE ANN. § 40-2-605(1)(e) (1987); *Thomas*, *supra* note 2, at 13.

92. *See Thomas*, *supra* note 2, at 13.

93. *Dulaney & Jonkel*, *supra* note 3, at 6.

94. *Id.*

benefit the parties and help them achieve mutual expectations.<sup>95</sup>

## V. CONCLUSION

Most couples do not seek premarital agreements. In part this is due to a popular distaste for such agreements. Some feel these agreements demean the traditional sanctity of marriage and question the underlying trust and commitment of the parties. Yet marriage constitutes an agreement with far reaching consequences should a dissolution occur and the parties find themselves without benefit of a premarital agreement. Were the ramifications of a divorce placed in contract form, potential spouses would no doubt be taken by surprise when asked to sign.<sup>96</sup>

Couples who do choose to vary from traditional marital and dissolution ramifications finally are able to do so with predictability because of extensive developments in premarital agreement laws. Contracts facilitating and encouraging divorce no longer are prohibited. Couples are now free to choose options that fit their particular needs and desires, which may include a desire to unite emotionally in marriage, but remain separate financially. The enforcement and use of premarital agreements actually may encourage marriage in these complex times of non-marital cohabitation and economical independence, by eliminating much of the economic uncertainty associated with a dissolution.

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95. Parties to premarital agreements will often be surprised at how little they know about each other's attitudes and expectations.

96. Weitzman, *Legal Relationship of Marriage: Tradition and Change*, 62 CAL. L. REV. 1169, 1170 (1974).