

37:2-31

LEGISLATIVE HISTORY CHECKLIST

NJSA: 37:2-31 to 37:2-41

(Premarital agreements-adopt Uniform Act)

LAWS OF: 1988

CHAPTER: 99

Bill No: A941

Sponsor(s): Kern

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: -----

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: May 9, 1988
Senate: June 16, 1988

Date of Approval: August 5, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes
Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clipping--attached
"Kean pens bill regulating pre-marital agreements, "8-6-88 Trenton Times
Also attached: memo from N.J. Commission on Sex Discrimination in the Statutes. *SUPPORTING S999+A941, JANUARY 1988*

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P.L. 1988, CHAPTER 99, *approved August 5, 1988*
1988 Assembly No. 941 (*Second Reprint*)

1 AN ACT concerning premarital agreements and enacting Article
5 of Chapter 2 of Title 37 of the Revised Statutes.

3

BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

7

TITLE 37
CHAPTER 2

9

Article 5. Premarital Agreements

37:2-31. Short title.

11

37:2-32. Definitions.

37:2-33. Formalities; consideration.

13

37:2-34. Contents of premarital agreement.

37:2-35. Premarital agreement not to adversely affect
right of child support.

15

37:2-36. When premarital agreement becomes effective.

17

37:2-37. Amendment or revocation of premarital
agreement.

19

37:2-38. Enforcement of premarital agreement; generally.

37:2-39. Enforcement of premarital agreement; marriage
determined void.

21

37:2-40. Construction of article.

23

37:2-41. Application of article.

25

Article 5. Premarital Agreements

37:2-31. Short title.

27

This article shall be known and may be cited as the "Uniform
Premarital Agreement Act."

29

Source: New.

37:2-32. Definitions. As used in this article:

31

a. "Premarital agreement" means an agreement between
prospective spouses made in contemplation of marriage and to
be effective upon marriage;

33

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted April 18, 1988.

² Assembly floor amendments adopted May 2, 1988.

1 b. "Property" means an interest, present or future, legal or
2 equitable, vested or contingent, in real or personal property,
3 including income and earnings;

4 c. "Unconscionable premarital agreement" means an
5 agreement, either due to a lack of property or unemployment;

6 (1) Which would render a spouse without a means of
7 reasonable support;

8 (2) Which would make a spouse a public charge; or

9 (3) Which would provide a standard of living far below that
10 which was enjoyed before the marriage.

11 Source: New.

12 37:2-33. Formalities: consideration.

13 A premarital agreement shall be in writing, with a statement
14 of assets annexed thereto, signed by both parties, and it is
15 enforceable without consideration.

16 Source: New.

17 37:2-34. Contents of premarital agreement.

18 Parties to a premarital agreement may contract with respect
19 to:

20 a. The rights and obligations of each of the parties in any of
21 the property of either or both of them whenever and wherever
acquired or located;

22 b. The right to buy, sell, use, transfer, exchange, abandon,
23 lease, consume, expend, assign, create a security interest in,
24 mortgage, encumber, dispose of, or otherwise manage and
25 control property;

26 c. The disposition of property upon separation, marital
27 dissolution, death, or the occurrence or nonoccurrence of any
28 other event;

29 d. The modification or elimination of spousal support;

30 e. The making of a will, trust, or other arrangement to carry
31 out the provisions of the agreement;

32 f. The ownership rights in and disposition of the death benefit
33 from a life insurance policy;

34 g. The choice of law governing the construction of the
35 agreement; and

36 h. Any other matter, including their personal rights and
37 obligations, not in violation of public policy.

38 Source: New.

1 37:2-35. Premarital agreement not to adversely affect right
of child support.

3 A premarital agreement shall not adversely affect the right of
a child to support.

5 Source: New.

 37:2-36. When premarital agreement becomes effective.

7 A premarital agreement becomes effective upon marriage of
the parties.

9 Source: New.

 37:2-37. Amendment or revocation of premarital agreement.

11 After marriage of the parties, a premarital agreement may be
amended or revoked only by a written agreement signed by the
13 parties, and the amended agreement or revocation is
enforceable without consideration.

15 Source: New.

 37:2-38. Enforcement of premarital agreement; generally.

17 The burden of proof to set aside a premarital agreement shall be
upon the party alleging the agreement to be unenforceable. A
19 premarital agreement shall not be enforceable if the party
1[who seeks] seeking¹ to set aside the agreement proves, by
21 clear and convincing evidence, that:

 a. The party executed the agreement involuntarily; or

23 b. The agreement was unconscionable at the time
enforcement was sought; or

25 c. That party, before execution of the agreement:

 (1) Was not provided full and fair disclosure of the earnings,
27 property and financial obligations of the other party;

 (2) Did not voluntarily and expressly waive, in writing, any
29 right to disclosure of the property or financial obligations of the
other party beyond the disclosure provided;

31 (3) Did not have, or reasonably could not have had, an
adequate knowledge of the property or financial obligations of
33 the other party; or

 (4) Did ²not consult with independent legal counsel and did²
35 not voluntarily and expressly waive, in writing, the opportunity
to consult with independent legal counsel.

37 d. The issue of unconscionability of a premarital agreement
shall be determined by the court as a matter of law.

39 Source: New.

1 37:2-39. Enforcement of premarital agreement; marriage
determined void.

3 If a marriage is determined to be void, an agreement that
would otherwise have been a premarital agreement is
5 enforceable only to the extent necessary to avoid an inequitable
result.

7 Source: New.

 37:2-40. Construction of article.

9 This article shall be construed to effectuate its general
purpose to make uniform the law with respect to the subject of
11 the article among states enacting the "Uniform Premarital
Agreement Act."

13 Source: New.

 37:2-41. Application of article.

15 This article shall apply to premarital agreements executed on
and after its effective date.

17 Source: New.

19 2. This act shall take effect on the 90th day following
enactment.

21

DOMESTIC RELATIONS

23

Property and Estates

25 Enacts a new article in Title 37 of the Revised Statutes
concerning premarital agreements.

1 This article shall be construed to effectuate its general
 2 purpose to make uniform the law with respect to the subject of
 3 the article among states enacting the "Uniform Premarital
 Agreement Act."

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37:2-41. Application of article.

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11 2. This act shall take effect on the 90th day following
 enactment.

13

STATEMENT

15

17 This bill is a composite of prevailing statutory and case law
 throughout the country relating to premarital agreements. The
 bill may be summarized as follows:

19 a. A premarital agreement must be in writing with a
 statement of the assets of both parties, signed by both of the
 21 parties and becomes effective upon marriage of the parties;

23 b. Parties to the agreement are granted a wide latitude in
 dealing with their property, their rights and obligations, spousal
 support, choice of law governing construction of the agreement
 25 to carry out the provisions of the agreement, but the agreement
 cannot contravene public policy or adversely affect the right of
 27 a child to support;

29 c. After marriage, a premarital agreement may be amended
 or revoked only by a written agreement signed by the parties;

31 d. The agreement must set for the conditions under which a
 premarital agreement is not enforceable; and

33 e. Limited enforcement of the agreement is available if the
 marriage is determined to be void.

35

DOMESTIC RELATIONS

37

Property and Estates

39 Enacts a new article in Title 37 of the Revised Statutes
 concerning premarital agreements.

A 941 (1988)

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 941

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 28, 1988

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 941.

This bill, the "Uniform Premarital Agreement Act", enacts a new article concerning premarital agreements. Under its provisions, a premarital agreement must be in writing, contain a statement of the assets of both parties, be signed by both parties and become effective upon the parties' marriage. The agreement cannot contravene public policy or adversely affect a child's right to support. An agreement can be amended or revoked only in writing.

The committee amendment makes a technical amendment to correct a grammatical error.

This bill was prefiled for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.



State of New Jersey

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January 1988

SENATE BILL 999/ASSEMBLY BILL 941

SPONSORED BY SENATOR WYNONA M. LIPMAN and ASSEMBLYMAN WALTER KERN

The Commission on Sex Discrimination in the Statutes supports the enactment of the Uniform Premarital Agreement Act. This legislation was promulgated by the National Conference of Commissioners on Uniform State Laws for enactment in all 50 states.

Since 1981, the Commission has been studying marriage and family law issues. Upon reviewing this legislation during the 1984-1985 legislative session, the Commission determined that sections of the bill would be strengthened by revising some of its provisions. Senate Bill 999, therefore, incorporates the Commission's revisions based upon its legal research including a review of the most recent New Jersey case law. D'Onofrio v. D'Onofrio 200 N.J. Super 361 (1985); Marschall v. Marschall 195 N.J. Super 16 (1984).

The traditional legal viewpoint has been that a contract between two people contemplating marriage cannot alter the essential incidents of marriage and that a contract could not be made in contemplation of divorce. With the increasing numbers of two-wage-earner families and the growing divorce rate, the courts recognized premarital agreements as valid, legal contracts. In recognizing such contracts, the courts have focused on the procedural fairness of the document; i.e. whether the parties were fully informed and acted voluntarily when they entered the contract. This legislation codifies those procedural contract doctrines.

Major Provisions:

Section 37:2-32 defines an unconscionable agreement as due either to lack of property or employability.

Section 37:2-34 specifies the contents of the agreement.

Section 37:2-33 provides that an agreement must be in writing with a statement of assets annexed to the agreement. The attachment of the assets strengthens the bill's disclosure requirement.

Section 37:2-38 states that a premarital agreement is not enforceable if it was not entered into voluntarily, it was unconscionable, there was not fair and full disclosure, and the party against whom enforcement is sought did not voluntarily waive, in writing, the right to consult an attorney. Full disclosure and independent counsel are crucial for premarital agreements because parties to these agreements are generally not dealing at arms length with each other. The emotional basis of the relationship of the contracting parties may cause the financially-dependent party to abandon the usual pre-agreement investigation and verification of the other party's financial position and fail to engage in bargaining usually associated with other financial transactions.