

Points of Law

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THANKS TO READERS

The friendly reaction to our last issue was much appreciated. This issue discusses a subject of interest to clients contemplating marriage. Marriage in our society has been referred to as an institution of ancient tradition in collision with the modern reality of divorce. We all know people who have been economically destroyed by divorce. Much of that economic destruction can be avoided by a properly crafted premarital agreement. As always, please feel free to call and discuss the subject further.

PREMARITAL AGREEMENTS

New Mexico has adopted a version of the Uniform Premarital Agreement Statute (NMSA 40-3A-1 to 40-3A-10). The statute allows couples to define their relationship within certain limits. For example premarital agreements:

- S May settle ownership, management and control of property and income,
- S May provide for disposition of property at death or on dissolution,
- S May require terms in a will or trust to carry out the agreement, and
- S May direct life insurance policy benefits,
- S May not adversely affect the right of a child or spouse to support, child custody or visitation, or choice of abode or career,
- S May be avoided if not executed voluntarily,

- S May be avoided if unconscionable when executed and if prior to execution the challenging party did know or receive reasonable disclosure of the other's assets,
- S Will take effect on marriage,
- S May determine the state of jurisdiction, but
- S May not violate Apublic policy.@

In *Lebeck v. Lebeck*, 118 N.M. 367 (1994) the New Mexico Court of Appeals gave strong judicial support to the premarital agreement statute. Such support is helpful, but the states differ on issues of support, child custody and property division. New Mexico or another state having jurisdiction of the parties could determine parts of an agreement to be contrary to its law and against public policy. Careful drafting, considering the laws of all of the states, can avoid such results. Also, care must be taken with the required disclosures and to insure that both parties have an adequate opportunity to consider the agreement.

WRITERS OPINION

Feelings that asking for such agreements shows a lack of love or commitment to marriage are often expressed. Such agreements show exactly the contrary. An agreement can provide for each other during marriage, in case of divorce and at death. The process of reaching agreement may help a

couple to think through the issues involved in marriage, to consider the depth of their feelings for each other, and to form realistic expectations of the other party. Surely that effort provides a better foundation for marriage than a courtship in which such concerns are not addressed and the risk of future marital problems is left to be resolved by Judicial Roulette.