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[Page 57]

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Trust and Estate Law

Colorado's New Uniform Premarital and Marital Agreements Act

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This article outlines Colorado's new Uniform Premarital and Marital Agreements Act, which takes effect July 1, 2014. The new Act conforms the model act to Colorado case law in most respects. However, it adopts new procedural protections for parties to a premarital or marital agreement.

In 2013, the Colorado Legislature enacted House Bill 13-1204, the Uniform Premarital and Marital Agreements Act (Uniform Colorado Act), which is Colorado's version of the Uniform

Premarital and Marital Agreements Act promoted by the National Conference of Commissioners on Uniform State Laws.¹ The new Uniform Colorado Act repeals and reenacts with amendments the Colorado Marital Agreement Act, CRS §§ 14-2-301 *et seq.* It takes effect July 1, 2014. Also effective July 1, 2014, a waiver of a marital right or obligation on the death of a spouse is unenforceable unless the waiver is contained in a premarital or marital agreement that is enforceable under the Uniform Colorado Act.²

Before discussing how the new Uniform Colorado Act will impact the enforcement of new and existing premarital and marital agreements, a short review of the development of Colorado statutes relating to premarital and marital agreements is critical. As a result of evolving standards, the date the premarital or marital agreement was signed may determine whether certain defenses can be raised to challenge its enforceability.

Three Standards for Enforceability of Premarital and Marital Agreements

Colorado now has three standards for the enforceability of premarital and marital agreements, each applied depending on when the agreement was entered into. The strictest standard is the standard created by the new Uniform Colorado Act. However, Colorado's version of the Uniform Premarital and Marital Agreements Act is not as stringent as the act that was drafted by the National Conference of Commissioners on Uniform State Laws.

Agreements Entered Into Before July 1, 1986

In the context of divorce, before 1986, there were no Colorado statutes regarding premarital or marital agreements. The Colorado Supreme Court first upheld the enforcement of a premarital agreement in divorce proceedings in *In re Marriage of Franks*.³

Four years later, in *In re Marriage of Ingels*,⁴ the Colorado Court of Appeals considered a challenge to the validity of a premarital agreement on the grounds, *inter alia*, that the premarital agreement was unconscionable at the time of signing. The court of appeals directly addressed the issue of unconscionability, inferring but not holding that such ground for invalidating a premarital agreement is cognizable.⁵ However, it determined that under the facts of *Ingels*, the agreement was not unconscionable. In holding that the parties would be "held to their bargain," the court pointed out that the terms of the agreement were not "so unfair," financial disclosures were made to the wife, the wife was a skilled businesswoman with a masters degree in marketing, and she voluntarily signed the agreement.⁶ Although the court alluded to the fact the wife was not represented by an attorney, that was considered as merely one of several factors indicating that the agreement was entered into knowingly.⁷

Also in 1979, in *In the Marriage of Stokes*, the court of appeals held that a valid premarital agreement, unlike a separation agreement, could not be successfully challenged as unconscionable at the time of divorce.⁸ The decision of *Stokes* was followed a year later by the Colorado Court of Appeals decision in *Estate of Lebsock*,⁹ where the court held that premarital agreements may be deemed unenforceable as to property issues if the agreement was determined to be unconscionable at the time of termination of the marriage by death.¹⁰

The Colorado Supreme Court considered *Stokes* and *Lebsock* to be in conflict with one another "regarding the application of an unconscionability test to antenuptial agreements."¹¹ The Colorado Supreme Court resolved the conflict in *Newman v. Newman*,¹² holding that property provisions of a premarital agreement are not subject to review for unconscionability at the time of divorce. Rather, parties seeking to invalidate a premarital agreement can do so only if they

can demonstrate nondisclosure, fraud, or overreaching at the time the agreement was made.¹³

However, maintenance provisions of the same agreement may become "voidable for unconscionability occasioned by circumstances existing at the time of the marriage dissolution."¹⁴ *Newman* held this was so even if the premarital agreement "is entered into in good faith, with full disclosure and without any element of fraud or overreaching."¹⁵

Agreements Entered Into on or After July 1, 1986 and Before July 1, 2014

In 1983, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Premarital Agreement Act (UPAA 1). As a response to the possible enactment of UPAA 1 in Colorado, the Colorado Legislature enacted the Colorado Marital Agreement Act, effective for agreements entered into on and after July 1, 1986.

In its review of the legislative history of the Colorado Marital Agreement Act, the Colorado Supreme Court stated that the 1986 Act "was to codify in a single statute Colorado's then-existing case law and statutes in order to prevent the adoption of the Uniform Premarital Agreement Act in Colorado."¹⁶ The Colorado Marital Agreement Act followed *Newman* by codifying the holding that a court may review maintenance terms of a premarital or marital agreement for conscionability at the time of enforcement, but may not review other terms of the agreement if the agreement was signed voluntarily and with reasonable disclosure.¹⁷

Among other differences between UPAA 1 and the Colorado Marital Agreement Act, the Colorado Marital Agreement Act allowed enforcement of post-marital agreements in addition to premarital agreements, codifying the Colorado case law that an agreement entered into after marriage will be upheld unless fraud, concealment, or failure to disclose material information can be established.¹⁸ Later case law distinguished agreements entered into during marriage while a divorce is being contemplated, and held that these agreements must also pass the test of conscionability.¹⁹ These agreements are held to the standard of separation agreements.²⁰ As separation agreements, they may include provisions regarding children and, if otherwise enforceable, child-related agreements will be enforceable.²¹

The Colorado Marital Agreement Act codified several requirements for an enforceable premarital or marital agreement:

- 1) a premarital or marital agreement must be in writing and signed by both parties (CRS §§ 14-2-302(1) and -303);
- 2) a premarital or marital agreement must be entered into voluntarily (CRS § 14-2-307(1)(a));
- 3) each party must provide to the other a fair and reasonable disclosure of his or her property or financial liabilities before executing the agreement (CRS § 14-2-307(1)(b));²²
- 4) a premarital or marital agreement may not violate public policy (CRS § 14-2-304(1)(i));²³ and
- 5) a premarital or marital agreement may not adversely affect the right of a child to child support (CRS § 14-2-304(3)).

Agreements Entered Into on or After July 1, 2014

In 2010, the National Conference of Commissioners on Uniform State Laws appointed a committee to draft a new uniform act to set forth standards for determining the enforceability of premarital and marital agreements. This resulted in the adoption of the Uniform Premarital and Marital Agreements Act (UPAA 2) in 2012.²⁴ Colorado and North Dakota are the only states that have adopted UPAA 2 at this time.²⁵

Major differences between UPAA 1 and UPAA 2 are found in the enforcement sections. UPAA 2 provides additional "due process in formation, on one hand, and certain minimal standards of substantive fairness, on the other."²⁶ As will be explained later in this article, the Colorado Legislature adopted all of the due process protections of UPAA 2.

Importantly, however, the Colorado Legislature did not adopt any new substantive fairness standards found in UPAA 2. Thus:

> UPAA 2 had an alternative provision to allow an inquiry into whether the premarital or marital agreement was unconscionable at the time of signing or whether enforcement of a term would result in serious hardship for a party because of a material change in circumstances arising after the agreement was signed.²⁷ This alternative was not adopted by the Colorado Legislature.

> UPAA 2 requires spousal support "to the extent necessary to avoid eligibility for programs of public assistance."²⁸ The Uniform Colorado Act allows an inquiry of whether a waiver or agreement about spousal support would be unconscionable.²⁹ The Colorado Act does not set the bar at eligibility for public support, but instead incorporates the language of the Colorado Marital Agreement Act.³⁰ In this regard, the Uniform Colorado Act did not change the Colorado Marital Agreement Act provision regarding spousal support.

> The Colorado Legislature modified the Uniform Colorado Act to include Colorado common law rules not found in UPAA 2.

> The Uniform Colorado Act codified the Colorado Supreme Court's position in *In re Marriage of Ikeler*,³¹ which held that a waiver of attorney fees in a marital agreement can be reviewed at the time of enforcement if it is unconscionable.³²

> Finally, although this issue is not specifically addressed in Colorado case law, the Colorado Legislature did not enact the provision of UPAA 2 addressing waiver of financial disclosure.³³ This will be explained in detail below.

Requirements of Uniform Colorado Act for an Enforceable Premarital or Marital Agreement

The Uniform Colorado Act creates new requirements for premarital and marital agreements to be deemed enforceable. Additionally, the Uniform Colorado Act expanded the list of unenforceable terms.

Access to Counsel and Other Procedural Requirements

UPAA 1 was criticized for going "too far in the direction of contractual autonomy at the expense of other manifest public policies relevant to marriage and divorce."³⁴ To a certain extent, the additional due process requirements of a premarital or marital agreement under UPAA 2 have already been used in one form or another in the best practices of Colorado estate planning and domestic relations attorneys who want to ensure that the premarital or marital agreements they draft will not be challenged.³⁵ Although UPAA 2 did not go so far as to require both parties to be represented by counsel³⁶ or mandating any particular "cooling off" period, both UPAA 2 and the Uniform Colorado Act require that the party against whom enforcement is sought had meaningful access to independent legal representation.³⁷

Under UPAA 2 and the Uniform Colorado Act, before signing a premarital or marital agreement the unrepresented party must have had reasonable time to: (1) decide whether to retain a lawyer to provide independent legal counsel; and (2) locate a lawyer, obtain a lawyer's advice, and consider the advice provided.³⁸ Although Colorado has no current case law regarding the enforceability of agreements signed on the eve of the wedding, this new requirement will make such agreements unenforceable. If only one party is represented by a lawyer, the unrepresented party must either: (1) have the financial ability to retain a lawyer; or (2) the represented party must agree to pay the reasonable fees and expenses of independent legal representation for the unrepresented party.³⁹

UPAA 2 and the Uniform Colorado Act also attempt to ensure that unrepresented parties waiving their rights understand the legal significance of the agreement they are entering. Unless the party had independent legal representation at the time of signing, a notice of waiver of rights must include language, conspicuously displayed, substantially similar to the following:

If you sign this agreement, you may be:

- **Giving up your right to be supported by the person you are marrying or to whom you are married.**
- **Agreeing to pay bills and debts of the person you are marrying or to whom you are married.**
- **Giving up your right to money and property if your marriage ends or the person to whom you are married dies.**
- **Giving up your right to have your legal fees paid.**⁴⁰

As a practical tip, for agreements executed on or after July 1, 2014, lawyers need to revise their standard language when representing a party whose spouse or fiancé is unrepresented to include the above safe-harbor language. Failure to do so will invalidate the agreement. In addition, the recitals of the premarital or marital agreement may include recitations that the unrepresented party had reasonable time to decide to retain independent counsel, to locate a lawyer, and to obtain and consider that lawyer's advice. Further, language should be included stating that the unrepresented party had the financial ability to retain a lawyer, or that the represented party agreed to pay the reasonable fees and expenses of the lawyer.

Other Requirements

The other requirements of an enforceable premarital or marital agreement under the Uniform Colorado Act are similar to the Colorado Marital Agreement Act:

- > A premarital or marital agreement (or amendments thereto) must be in writing and signed by both parties. A premarital or marital agreement is unenforceable if not "in a record and signed by both parties."⁴¹

> Consent to the premarital or marital agreement must be voluntary and not the result of duress.⁴²

> The party against whom enforcement is sought has to provide adequate financial disclosure. Adequate financial disclosure is more fully described in the new Uniform Colorado Act than in the Colorado Marital Agreement Act, and adds the requirement of disclosure of income. Under new CRS § 14-2-309 (4), if the party receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party, or the party has adequate knowledge or a reasonable basis to have adequate knowledge of the property, liabilities, and income of the other party, the party has adequate financial disclosure.⁴³ The new financial disclosure provisions of the Uniform Colorado Act generally reflect established Colorado case law.⁴⁴

> Notably, Section 9(d)(2) of the UPAA 2 concerning waiver of disclosure was not included in the Uniform Colorado Act.⁴⁵ Therefore, adequate disclosure remains a requirement for a valid agreement.

Expanded List of Unenforceable Terms Under the Uniform Colorado Act

Even if the above requirements have been met, provisions in an agreement or modification relating to spousal maintenance or attorney fees will be unenforceable if considered unconscionable at the time of enforcement.⁴⁶ Additionally, Colorado adopted the UPAA 2's expanded unenforceable term section. An unenforceable term is a term that: (1) adversely affects a child's right to support; (2) limits or restricts a remedy available to a victim of domestic violence; (3) attempts to modify a court-decreed legal separation or marital dissolution; (4) penalizes a party for initiating a legal proceeding leading to legal separation or marital dissolution; (5) violates public policy; or (6) defines rights or duties of parties regarding custodial responsibility.⁴⁷

Waiver of Rights Upon Death

Premarital and marital agreements can address the rights of a surviving spouse in the estate of a deceased spouse. CRS § 15-11-207 has been amended so that a waiver of rights of a surviving spouse under that statute cannot be unilateral. Although a unilateral waiver under former CRS § 15-11-207 was required to have been enforceable under the Colorado Marital Agreement Act (voluntarily signed, without duress, and with adequate disclosure), there was no requirement that there be an agreement between the parties. Thus, waiver documentation signed by one party that results in the loss of a statutory right upon death is no longer sufficient. Waivers of rights upon death will be valid only if found in a premarital or marital agreement specifically identifying the rights waived. The repeal and reenactment of CRS § 15-11-207 is effective for agreements entered into on or after July 1, 2014.

A reference to "a waiver of rights upon death" as provided in former CRS § 15-11-207 incorporated by reference those rights enumerated in CRS § 15-11-207(1)(a) through (c) (rights of election of a surviving spouse, rights of the surviving spouse to exempt property, family allowance, and the deceased spouse's homestead exemption). As of July 1, 2014, CRS § 15-11-207 does not refer to a particular list of rights that may be waived at death, and therefore incorporation by reference to this statute will no longer be available for agreements executed on or after July 1, 2014. Similarly, former CRS § 14-2-304(2) of the Colorado Marital Agreement Act provided that a reference to "a waiver of all rights upon death" would incorporate by reference all of the rights enumerated in CRS § 14-2-304(2)(a) through (c).⁴⁸ The Uniform

Colorado Act does not provide a specific section that allows incorporation by reference. As a practical tip, for agreements executed after July 1, 2014, lawyers may want to revise their standard language for waiver of rights upon death to separately state each right the parties are relinquishing.

Other Provisions

The Uniform Colorado Act makes clear that a premarital or marital agreement is only one that is between persons who intend to marry or are married and relates to marital rights or obligations during a marriage or at its termination by dissolution or death.⁴⁹ Thus, other contractual agreements between married persons will not be confused for a premarital or marital agreement.

The Uniform Colorado Act allows for electronic signatures.⁵⁰ An electronic signature for the purposes of the Uniform Colorado Act is the attachment or association of an electronic symbol, sound, or process to the record. The record can be an electronic record stored in a retrievable form.⁵¹

The Uniform Colorado Act does not apply to any premarital or marital agreements signed before July 1, 2014, and does not affect any agreements signed before July 1, 2014.⁵² Therefore, there is no need for parties to reaffirm or amend their current agreements. However, modifications or amendments to those agreements may need to conform to the new law.⁵³

The Uniform Colorado Act allows for limited choice of law. Parties may choose a state's law other than Colorado's to govern an agreement if that state has a significant relationship to one of the parties or to the agreement itself, that state's laws regarding enforcement are not contrary to Colorado's, and the chosen state's laws are not contrary to Colorado's fundamental public policy.⁵⁴

The Uniform Colorado Act specifically applies to parties to a civil union or prospective parties to a civil union.⁵⁵

Conclusion

For the first time, Colorado has enacted a uniform act to govern premarital and marital agreements. However, Colorado remained faithful to its own common law by rejecting the parts of the UPAA 2 that did not comport with existing law. Therefore, the Uniform Colorado Act is not to be read as abrogating Colorado's case law regarding premarital and marital agreements. In enacting the Uniform Colorado Act, Colorado accepted some additional measures to ensure that both parties are protected. The most significant change is the requirement for actual access to an attorney for both parties, and the requirement of a clear warning on any agreement where a party proceeds without an attorney. However, parties remain fully able to contract in any way they wish with respect to property. Limitations remain on contracts regarding maintenance and attorney fees. The Uniform Colorado Act is somewhat more specific than the Colorado Marital Agreement Act regarding terms involving children: the Uniform Colorado Act specifically states that agreement terms regarding custodial responsibility are not binding on a court.⁵⁶ The Uniform Colorado Act retains the Colorado Marital Agreement Act provision that an agreement adversely affecting a child's right to support is not enforceable.⁵⁷

Notes

1. HB 13-1204 (2013), to be codified at CRS §§ 14-2-301 *et seq.*, effective July 1, 2014.

2. HB 13-1204 (2013), to be codified at CRS § 15-11-207, which applies to any "affirmation, modification or waiver of a marital right or obligation."

3. *In re Marriage of Franks*, 542 P.2d 845, 852-53 (Colo. 1975):

At the outset, it appears that the agreement was specifically sanctioned by several sections of the Louisiana Code. *See* Louisiana Civil Code, articles 2325, 2328, 2329, 2332, and 2392. Unless there is some strong public policy in this state against such contracts, the antenuptial contract must be given full force and effect in the courts of this state. We can find no authority that such contracts are violative of any such policy. Quite to the contrary, such contracts are generally enforceable. We agree with the statement in *Irwin v. Irwin*, 150 Colo. 261, 372 P.2d 440: "Constitutional provisions inhibit the passage of any law impairing the obligation of contracts. A fortiori the judiciary cannot relieve parties to a fair and binding contract from the obligations thereof, or deny them the rights granted. . . ."

4. *In re Marriage of Ingels*, 596 P.2d 1211 (Colo.App. 1979).

5. *Id.* at 1214.

6. *Id.*

7. *Id.*:

[W]hile it would have been prudent on husband's part to provide wife with independent counsel, his failure to do so does not render the antenuptial agreement void per se. The availability of independent legal advice is just one of many factors which must be taken into account by the fact finder in determining whether an antenuptial agreement has been entered into with full knowledge of its consequences. (citations omitted).

8. *In re Marriage of Stokes*, 608 P.2d 824, 828 (Colo.App. 1979).

9. *Matter of Lebsock's Estate*, 618 P. 2d 683 (Colo.App. 1980).

10. *Id.* at 685.

11. *Newman v. Newman*, 653 P.2d 728, n.5 (Colo. 1982).

12. *Id.*

13. *Id.* at 733.

14. *Id.* at 734.

15. *Id.*

16. *In re Marriage of Ikeler*, 161 P.3d 633, 668 (Colo. 2007).

17. Colorado Marital Agreement Act, CRS § 14-2-307(2):

A marital agreement or amendment thereto or revocation thereof that is otherwise

enforceable after applying the provisions of subsection (1) of this section is nevertheless unenforceable insofar, but only insofar, as the provisions of such agreement, amendment, or revocation relate to the determination, modification, or elimination of spousal maintenance and such provisions are unconscionable at the time of enforcement of such provisions.

18. *Matter of Lewin's Estate*, 595 P.2d 1055, 1058 (Colo.App. 1979).

19. *In re Marriage of Bisque*, 31 P.3d 175 (Colo.App. 2001).

20. *Id.*; CRS § 14-10-112.

21. CRS § 14-10-112(2).

22. The UPAA 1 would allow inadequate financial disclosure as a ground for invalidating the agreement only if it was also shown to be unconscionable when signed. Section 6, UPAA 1.

23. A written agreement whereby wife agreed to rear children in Catholic faith was held unenforceable in *Marriage of Wolfert*, 42 Colo.App. 433, 435 (1979). The Colorado Supreme Court held that a provision of a premarital agreement waiving a party's right to attorney fees was unenforceable because it violated the public policy of "ensur[ing] neither party suffers undue economic hardship because of the dissolution of marriage." *Ikeler*, 161 P.3d at 669.

24. UPAA 2, [uniformlaws.org/Act.aspx?title=Premarital and Marital Agreements Act](http://uniformlaws.org/Act.aspx?title=Premarital%20and%20Marital%20Agreements%20Act). The official Comments to the 2012 Act were not included in the publication of the Uniform Colorado Act, but may be cited in court documents. If done, care should be taken to compare the Uniform Colorado Act to the UPAA 2 for the reasons discussed in this article.

25. *Id.*

26. National Conference of Commissioners on Uniform State Laws, Prefatory Note and Comments to Uniform Premarital and Marital Agreements Act (Oct. 1, 2012).

27. Section 9(f), UPAA 2.

28. Section 9(e), UPAA 2.

29. HB 13-1204 (2013), to be codified at CRS § 14-2-309(5).

30. *In re Marriage of Dechant*, 867 P.2d 193, 195 (Colo.App. 1993) ("[T]he standard of living established during the marriage is pertinent to determining a spouse's eligibility for maintenance."). *See also id.* ("In determining whether the threshold need for maintenance has been established, the phrases 'appropriate employment' and 'reasonable needs' are not to be interpreted so narrowly as to require a spouse to establish that he or she lacks the minimum resources to sustain life.").

31. *Ikeler*, 161 P. 3d 633.

32. HB 13-1204 (2013), to be codified at CRS § 14-2-309(5).

33. Section 9(d)(2), UPAA 2.

34. Atwood, "Ten Years Later: Lingering Concerns About the Uniform Premarital Agreement Act," 19 *J. of Legislation* 127, 130 (1993). *See also* Oldham, "With All My Worldly Goods I Thee Endow, or Maybe Not: A Reevaluation of the Uniform Premarital Agreement Act After Three Decades," 19 *Duke J. Gender Law & Policy* 83 (Fall 2011).

35. *See, e.g.,* Smith *et al.*, "Marital Agreements in Colorado," 36 *The Colorado Lawyer* 52, 60 (Feb. 2007) (suggesting that if a party refuses to have separate counsel, the parties should expressly acknowledge the waiver of independent counsel in the agreement).

36. The official Comments recognize that UPAA 2 stops short of requiring that each party be represented by counsel, as is required to have an effective waiver of spousal rights at death in the state of California (California Probate Code § 143(a)). Comment to Section 9, UPAA 2.

37. Section 9(a)(2) and (b)(1), UPAA 2; HB 13-1204 (2013), to be codified at CRS § 14-2-309(1)(b) and (2)(a).

38. *Id.*

39. Section 9(a) and (b)(2), UPAA 2; HB 13-1204 (2013), to be codified at CRS § 14-2-309(1)(b) and (2)(b).

40. Sections 9(a)(3) and 9(c), UPAA 2; HB 13-1204 (2013), to be codified at CRS § 14-2-309(1)(c) and (3).

41. Section 6, UPAA 2; HB 13-1204 (2013), to be codified at CRS § 14-2-306. There is a possibility that e-mail marital and premarital agreements will fit under the definition of "record." HB 13-1204 (2013), to be codified at CRS § 14-2-302(7).

42. Section 9(a)(1), UPAA 2; HB 13-1204 (2013), to be codified at CRS § 14-2-309(1)(a). The official Comments to UPAA 2 state that the presence of domestic violence "would be of obvious relevance to any conclusion about whether a party's consent to an agreement was 'involuntary or the result of duress.'" *See* National Conference of Commissioners on Uniform State Laws, Comments to Uniform Premarital and Marital Agreements Act 14 (Oct. 1, 2012).

43. Section 9(a)(4), UPAA 2; HB 13-1204 (2013), to be codified at CRS § 14-2-309(1)(d) and (4).

44. Even though the parties did not disclose the value of their assets, where parties were represented by separate counsel, knew one another for nine months before marriage, had adequate disclosure of the property of one another, and had actual knowledge as to the other's property, and there was no concealment of assets, the premarital agreement is enforceable. *In re Marriage of Ross*, 670 P.2d 26, 28-29 (Colo. 1978). *See also In re Lopata's Estate*, 641 P.2d 952, 955 (Colo.App. 1982):

Fair disclosure is not synonymous with detailed disclosure such as a financial statement of net worth and income. . . . Fair disclosure contemplates that each spouse should be given information, of a general and approximate nature, concerning the net worth of the other.

45. Section 9(d)(2), UPAA 2, provides that a person has adequate disclosure if the party expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided. The Colorado legislature eliminated that provision.

46. HB 13-1204 (2013), to be codified at CRS § 14-2-309(5):

A marital agreement or amendment thereto or revocation thereof that is otherwise enforceable after applying the provisions of subsections (1) to (4) of this section is nevertheless unenforceable insofar, but only insofar, as the provisions of such agreement, amendment, or revocation relate to the determination, modification, or elimination of spousal maintenance or the waiver or allocation of attorney fees, and such provisions are unconscionable at the time of enforcement of such provisions.

47. Section 10, UPA 2; HB 13-1204 (2013), to be codified at CRS § 14-2-310.

48. Colorado Marital Agreement Act, CRS § 14-2-304(2), effective for agreements entered into before July 1, 2014:

Unless the marital agreement provides to the contrary, a waiver of "all rights upon death" (or equivalent language) in the property or estate of a present or prospective spouse is:

(a) A waiver of all rights to the elective share, exempt property, family allowance, and homestead exemption of the waiving party in the property of the other;

(b) A waiver of the statutory priority of the waiving party to serve as personal representative, executor, or administrator of the estate of the other; and

(c) A renunciation and disclaimer by the waiving party of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of the provisions of any will executed before the marital agreement. Provisions of a will executed before the marital agreement are given effect as if the waiving party:

(I) Disclaimed all interests passing to him or her under the will; and

(II) Became disqualified to serve as personal representative, executor, administrator, or trustee.

49. CRS § 14-2-302(2) and (5).

50. CRS § 14-2-302(8).

51. CRS § 14-2-302(7) and (8).

52. CRS § 14-2-303(2).

53. *Id.* One open question is whether a post-July 1, 2014 amendment to a pre-July 2014 agreement need only comply with pre-July 1, 2014 law if the agreement specifically allows for amendment. The best practice would be to comply with post-July 1, 2014 law when amending any agreement.

54. CRS § 14-2-304.

55. CRS § 14-2-303.5.

56. CRS § 14-2-310(3).

57. CRS § 14-2-310(2)(a).

Appendix: Colorado Marital and Premarital Agreements

	Pre-July 1986	July 1986 to June 30, 2014	July 1, 2014
Application of New Statute	These agreements do not need to be revised to comply with the new statute.	These agreements do not need to be revised to comply with the new statute.	All agreements entered into on this date and after must comply with new statute. This also applies to all affirmations, modifications of prior agreements, and waivers of marital rights or obligations after July 1, 2014.
Formal Requirements	Same as a contract. <i>IRM Dechant</i>	In writing and signed. CRS § 14-2-303	In writing and signed (electronic signature acceptable). CRS §§ 14-2-306 and -302(8)
Disclosure Requirements	<ul style="list-style-type: none">Fair disclosure is required, which means general and approximate information or knowledge of other regarding net worth and assets. <i>IRM Lopata; IRM Stokes; IRM Ingels</i>It is not fair disclosure if there is fraud or concealment. <i>IRM Lopata</i>	Fair and reasonable disclosure of the property or financial obligations of the other party. CRS § 14-2-307(1)(b)	Adequate disclosure. Adequate financial disclosure means: reasonably accurate description and good-faith estimate of value of property, liabilities, and income of other party; or has adequate knowledge or a reasonable basis for having adequate knowledge of the same. CRS § 14-2-309(4) Disclosure may not be waived.
Choice of Law	General contract law; general law regarding conflicts of law. <i>IRM Dechant</i>	Parties may contract as to choice of law governing construction of agreement. CRS § 14-2-304(1)(h)	Parties may contract as to choice of law governing the validity, enforceability, interpretation, and construction, if the state chosen has a significant relationship to one of

			the parties or to the agreement itself, and laws regarding enforcement are not contrary to Colorado's public policy or the enforceability provisions of the Act. CRS § 14-2-304(1)(a)
Basis to Void Contract	<ul style="list-style-type: none"> • Fraud, concealment, or failure to disclose material information. <i>Estate of Lewin</i> • No independent counsel for a party is not a basis for a finding that agreement is invalid. <i>Estate of Lebsock</i> 	<ul style="list-style-type: none"> • Not voluntary. CRS § 14-2-307(1)(a) • No full disclosure before signing. CRS § 14-2-307(1)(b) 	<ul style="list-style-type: none"> • Not voluntary. CRS § 14-2-309(a) • No adequate financial disclosure. CRS § 14-2-309(d) and (4) Adequate financial disclosure means: reasonably accurate description and good-faith estimate of value of property, liabilities, and income of other party; or has adequate knowledge or a reasonable basis for having adequate knowledge of the same. CRS § 14-2-309(4) • A party did not have access to representation, including funds from other party, if other party has attorney. CRS § 14-2-309(1)(b) and (2) • Lack of standardized warning language in the agreement and a party did not have counsel. CRS § 14-2-309(1)(c) and (3)
Shorthand Provisions		Waiver of "all rights upon death" language acceptable, and means (a) A waiver of all rights to the elective share, exempt property, family allowance, and homestead exemption of the waiving party in the property of the other; (b) A waiver of the statutory priority of the waiving party to serve as	

		<p>personal representative, executor, or administrator of the estate of the other;</p> <p>and (c) A renunciation and disclaimer by the waiving party of all benefits that otherwise would pass to him or her from the other by intestate succession or by virtue of the provisions of any will executed before the marital agreement. Provisions of a will executed before the marital agreement are given effect as if the waiving party: (I) Disclaimed all interests passing to him or her under the will; and (II) Became disqualified to serve as personal representative, executor, administrator, or trustee.</p> <p>CRS 14-2-304(2)</p>	
Voidable Provisions		<ul style="list-style-type: none"> • Maintenance waiver not enforced if unconscionable at time of dissolution. CRS § 14-2-307(2) • Attorney fee waiver not enforced if unconscionable at time of dissolution. <i>IRM Ikeler</i> 	<ul style="list-style-type: none"> • Maintenance waiver not enforced if unconscionable at time of dissolution. CRS § 14-2-309(5) • Attorney fee waiver not enforced if unconscionable at time of dissolution. CRS § 14-2-309(5)
Unenforceable Provisions		<ul style="list-style-type: none"> • Terms adversely affecting right of child to support. CRS § 14-2-304(3) • Terms that violate public policy. CRS § 14-2-304(1)(i) • Terms that would constitute a crime. CRS § 14-2-304(1)(i) 	<p>Terms that adversely affect a child's right to support, limit a remedy available to a victim of domestic violence, modify a ground for divorce, penalize a party for initiating divorce, or violate public policy.</p> <p>CRS § 14-2-310(2)</p>
Provisions not Binding on Court	<p>Agreements regarding what religion in which to raise children.</p> <p><i>IRM Wolfert</i></p>		<p>Terms that define the rights or duties of parties regarding custodial responsibility.</p> <p>CRS § 14-2-310(3)</p>
Standard of	<ul style="list-style-type: none"> • Parties are in a 	<ul style="list-style-type: none"> • Enforce agreements 	<ul style="list-style-type: none"> • Enforce agreement

Review	<p>fiduciary relationship with each other. They must act with high degree of fairness and disclosure at time of execution. <i>IRM Newman</i></p> <ul style="list-style-type: none"> Uphold property agreements unless fraud, overreaching, or sharp dealing found at time of execution; but maintenance agreements may be voided if unconscionable at time of dissolution of marriage. <i>IRM Newman</i> 	<p>terms unless in violation of statute, or where statute says court may void all or some of the terms, or need not enforce the terms.</p> <ul style="list-style-type: none"> Uphold property agreements unless fraud, overreaching, or sharp dealing found at time of execution. <i>IRM Newman</i> 	<p>terms unless in violation of statute, or where statute says court may void all or some of the terms, or need not enforce the terms.</p> <ul style="list-style-type: none"> Uphold property agreements unless fraud, overreaching, or sharp dealing found at time of execution. <i>IRM Newman</i>
Rules do not Apply to		<p>An agreement executed in contemplation of divorce. <i>IRM Bisque</i></p>	<p>An agreement between spouses who intend to obtain a dissolution of marriage and is signed when a dissolution is anticipated or pending. CRS § 14-2-303(3)(b)</p>
Rules do Apply to			<p>Civil unions. CRS § 14-2-303.5</p>
<p>Case Law <i>In re Marriage of Bisque</i>, 31 P.3d 175 (Colo.App. 2001). <i>In re Marriage of Dechant</i>, 867 P.2d 193 (Colo.App. 1993). <i>In re Marriage of Ikeler</i>, 161 P.3d 663 (Colo. 2007). <i>Matter of the Estate of Lebsock</i>, 618 P.2d 683 (Colo.App. 1980). <i>Matter of Estate of Lewin</i>, 595 P.2d 1055 (Colo.App. 1979). <i>In re Estate of Lopata</i>, 641 P.2d 952 (Colo. 1982). <i>In re Marriage of Newman</i>, 653 P.2d 728 (Colo. 1982). <i>In re Marriage of Stokes</i>, 608 P.3d 824 (Colo.App. 1979). <i>In re Marriage of Wolfert</i>, 598 P.2d 524 (Colo.App. 1979).</p>			

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[Back](#)