

Setting Aside a Premarital Agreement

By K. Dean Kantaras and Azhar Cheema

A premarital agreement, commonly known as a prenuptial agreement, means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage. Premarital agreements are governed by Florida Statute §61.079. A premarital agreement must be in writing and signed by both parties.

However, a premarital agreement is not enforceable if:

1. The party did not execute the agreement voluntarily.
2. The agreement was the product of fraud, duress, coercion, or overreaching.
3. The agreement was unconscionable when it was executed and, before execution of the agreement, that party was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; and did not voluntarily and expressly waive in writing any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the other party.

To demonstrate fraud, a moving party is required to establish four elements: an adverse party made a false statement regarding a material fact; with knowledge that the statement was false; with the intention to induce another's reliance; which consequently injured the party who acted in reliance on the false statement.

Duress is a condition of mind produced by an improper external pressure or influence that practically destroys the free



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agency of a party and causes him to do an act or make a contract not of his own volition. Two factors must be proven to establish duress: the act sought to be set aside was affected involuntarily and thus not as an exercise of free choice or will and that this condition of mind was caused by some improper and coercive conduct of the opposite side.

Coercion occurs where the defending spouse, through undue influence or moral or economic force, compels the challenging spouse to sign a prenuptial agreement under circumstances which, from a subjective viewpoint, evidence that the challenging spouse did not act of his or her own free will.

Overreaching involves the situation where one party, having the ability to force the other into an unfair agreement, does so.

To find an agreement unconscionable, a court must conclude it is both procedurally and substantively unconscionable. The central question in determining whether

a contract is procedurally unconscionable is whether the complaining party lacked a meaningful choice when entering into the contract. Substantive unconscionability concerns whether the terms of the contract are so unreasonable and unfair, courts should withhold their enforcement.

Additionally, temporary support and temporary attorney's fees may not be waived in a premarital agreement. The evolution in Florida law approving premarital agreements concerning post-dissolution support has so far not extended to provisions waiving the right to recover pre-judgment support, such as temporary alimony. Moreover, the Florida Supreme Court held that public policy and the statutory obligation of support permits the award of temporary attorney's fees to a spouse even where an agreement provides that the parties will each pay their own attorney's fees or that the prevailing party is entitled to fees in any litigation over the validity of the agreement.

If a premarital agreement is set aside, the parties begin a normal divorce process as though no premarital agreement existed. ❖

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