

A bill to be entitled

An act relating to premarital agreements; providing a short title; creating s. 61.079, F.S.; defining the terms "premarital agreement" and "property"; requiring that a premarital agreement be in writing and signed by both parties; providing that the agreement is enforceable without consideration; authorizing the parties to a premarital agreement to contract with respect to certain specified issues; providing that an agreement becomes effective upon marriage; providing for amendments to, revocation, and abandonment of an agreement; providing for enforcement of an agreement; providing for application of the act; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Uniform Premarital Agreement Act."

Section 2. Section 61.079, Florida Statutes, is created to read:

61.079 Premarital agreements.--

(1) DEFINITIONS.--As used in this section, the term:

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

(b) "Property" includes, but is not limited to, an interest, present or future, legal or equitable, vested or

HB 577

2007

29 contingent, in real or personal property, tangible or  
30 intangible, including income and earnings, both active and  
31 passive.

32 (2) FORMALITIES.--A premarital agreement must be in  
33 writing and signed by both parties. It is enforceable without  
34 consideration other than the marriage itself.

35 (3) CONTENT.--

36 (a) Parties to a premarital agreement may contract with  
37 respect to:

38 1. The rights and obligations of each of the parties in  
39 any of the property of either or both of them whenever and  
40 wherever acquired or located;

41 2. The right to buy, sell, use, transfer, exchange,  
42 abandon, lease, consume, expend, assign, create a security  
43 interest in, mortgage, encumber, dispose of, or otherwise manage  
44 and control property;

45 3. The disposition of property upon separation, marital  
46 dissolution, death, or the occurrence or nonoccurrence of any  
47 other event;

48 4. The establishment, modification, waiver, or elimination  
49 of spousal support;

50 5. The making of a will, trust, or other arrangement to  
51 carry out the provisions of the agreement;

52 6. The ownership rights in and disposition of the death  
53 benefit from a life insurance policy;

54 7. The choice of law governing the construction of the  
55 agreement; and

56 8. Any other matter, including their personal rights and

57 obligations, not in violation of either the public policy of  
 58 this state or a law imposing a criminal penalty.

59 (b) The right of a child to support may not be adversely  
 60 affected by a premarital agreement.

61 (4) EFFECT OF MARRIAGE.--A premarital agreement becomes  
 62 effective upon marriage of the parties.

63 (5) AMENDMENT, REVOCATION, OR ABANDONMENT.--After  
 64 marriage, a premarital agreement may be amended, revoked, or  
 65 abandoned only by a written agreement signed by the parties. The  
 66 amended agreement, revocation, or abandonment is enforceable  
 67 without consideration.

68 (6) ENFORCEMENT.--

69 (a) A premarital agreement is not enforceable in an action  
 70 proceeding under the Florida Family Law Rules of Procedure if  
 71 the party against whom enforcement is sought proves that:

72 1. The party did not execute the agreement voluntarily;

73 2. The agreement was the product of fraud, duress,  
 74 coercion, or overreaching; or

75 3. The agreement was unconscionable when it was executed  
 76 and, before execution of the agreement, that party:

77 a. Was not provided a fair and reasonable disclosure of  
 78 the property or financial obligations of the other party;

79 b. Did not voluntarily and expressly waive, in writing,  
 80 any right to disclosure of the property or financial obligations  
 81 of the other party beyond the disclosure provided; and

82 c. Did not have, or reasonably could not have had, an  
 83 adequate knowledge of the property or financial obligations of  
 84 the other party.

HB 577

2007

85 (b) If a provision of a premarital agreement modifies or  
86 eliminates spousal support and that modification or elimination  
87 causes one party to the agreement to be eligible for support  
88 under a program of public assistance at the time of separation  
89 or marital dissolution, a court, notwithstanding the terms of  
90 the agreement, may require the other party to provide support to  
91 the extent necessary to avoid that eligibility.

92 (c) An issue of unconscionability of a premarital  
93 agreement shall be decided by the court as a matter of law.

94 (7) ENFORCEMENT; VOID MARRIAGE.--If a marriage is  
95 determined to be void, an agreement that would otherwise have  
96 been a premarital agreement is enforceable.

97 (8) LIMITATION OF ACTIONS.--Any statute of limitations  
98 applicable to an action asserting a claim for relief under a  
99 premarital agreement is tolled during the marriage of the  
100 parties to the agreement. However, equitable defenses limiting  
101 the time for enforcement, including laches and estoppel, are  
102 available to either party.

103 Section 3. If any provision of this act or its application  
104 to any person or circumstance is held invalid, the invalidity  
105 does not affect other provisions or applications of this act  
106 which can be given effect without the invalid provision or  
107 application, and to this end the provisions of this act are  
108 severable.

109 Section 4. This act shall take effect October 1, 2007, and  
110 applies to any premarital agreement executed on or after that  
111 date.