

What is a premarital agreement?

Utah Code § 30-8-2. Definitions.

As used in this chapter:

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

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

In what form does a premarital agreement need to be?

Utah Code § 30-8-3. Writing -- Signature required.

A premarital agreement shall be in writing and signed by both parties. It is enforceable without consideration.¹

What must a premarital agreement contain?

See Utah Code § 30-8-4. Content.

The provisions of Utah Code § 30-8-4 are:	This means:
(1) Parties to a premarital agreement may contract with respect to:	
(a) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;	This is usually what people think of as the purpose of a premarital agreement, i.e., making sure that neither spouse can 1) make a claim to the other spouse's pre-marital and separate property in divorce and 2) making advance arrangements for how property

¹ If you are wondering what it means for a premarital agreement to be “enforceable without consideration,” consideration is—unless the law provides otherwise, as it does in the Utah Uniform Premarital Agreement Act—a necessary element in a binding contract. Consideration is a benefit which must be bargained for between the parties, and is the essential reason for a party entering into a contract.

The provisions of Utah Code § 30-8-4 are:	This means:
	acquired by the couple during the marriage will be divided in divorce.
<p>(b) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;</p> <p>(c) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;</p>	These paragraphs mean, essentially, that a couple can make between them their own rules as to what kind of claims they can make on the property and the property rights of each other during the marriage, such that their rules they agreed upon between themselves can be different than the law that would otherwise apply between spouses in the absence of a premarital agreement.
<p>(d) the modification or elimination of spousal support;</p>	One of the main reasons a couple contemplating marriage wants enter into a premarital agreement is to have certainty
<p>and predictability on the issue of spousal support, which is also known as alimony. On its face, Subsection (d) of Utah code § 30-8-4 would appear to indicate that couples are free to agree to the amount of spousal support/alimony and even to agree upon no award of spousal support/alimony in the event of divorce. Not really.</p> <p>“[P]rovisions eliminating the payment of child support or alimony in prenuptial agreements are not binding on the court. This judicial discretion allows the parties freedom of contract while preserving the right of the state to insure adequate support for its citizens.” <i>Huck v. Huck</i>, 734 P.2d 417, 419 (Utah 1986).</p> <p>The Utah Supreme Court also indicated in <i>Huck</i> that prenuptial agreements would be treated differently insofar as they purported to eliminate payment of child support or alimony. Enforcement of these provisions is left to the discretion of the trial court. <i>Huck</i>, 734 P.2d at 419; <i>Berman v. Berman</i>, 749 P.2d 1271,1274 (Utah Ct. App. 1988).</p>	

The provisions of Utah Code § 30-8-4 are:	This means:
<p>So bottom line: a divorce court may or may not hold provisions governing the limitation or elimination of spousal support/alimony. Don't be afraid to make provisions in a premarital agreement for limitations on or elimination of spousal support, but know that you cannot depend upon those provisions being upheld by the court in an actual divorce action.</p> <p>You will also want to take note of Subsection (2) of Utah Code § 30-8-6:</p> <p>(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.</p>	
<p>(e) the ownership rights in and disposition of the death benefit from a life insurance policy;</p>	<p>To be honest with you about this subsection of the Code, I don't really know what its impact could be in a divorce. It is my understanding that one who has a life insurance policy is the owner of that policy and free to determine the beneficiary or beneficiaries of that policy without fear of his/her spouse making a claim to the death benefits of that policy if he/she is not named as a beneficiary, but it appears from Subsection (1)(e) that I could be mistaken.</p>
<p>(f) the choice of law governing the construction of the agreement, except that a court of competent jurisdiction may apply the law of the legal domicile of either party, if it is fair and equitable; and</p>	<p>This means that you can agree that the terms of your premarital agreement can be governed by and construed under the laws of the state other than Utah's, unless the divorce court decides that is fair and equitable to apply the law of the domicile (domicile means where you call home) of either spouse in the divorce action.</p>

The provisions of Utah Code § 30-8-4 are:	This means:
<p>(g) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.</p>	<p>Subsection (g) more or less speaks for itself, meaning that its tells you very little. It's open to almost any interpretation.</p> <p>It is fairly clear, however, that a premarital agreement cannot contain provisions that violate public policy (whatever that means) and criminal statutes.</p>
<p>(2) The right of a child to support, health and medical provider expenses, medical insurance, and child care coverage may not be affected by a premarital agreement.</p>	<p>I have to tell you I don't really know what this means or how it would be applied because even the Utah Code itself allows parents and the courts quite a bit of latitude in deciding the amount of child support and</p>
<p>who will pay and how it will be paid and in what form child support is made. Still, the conventional wisdom is that if a premarital agreement seeks to reduce the amount of child support (and by child support, I mean that expansively to include not just the base monthly child support one pays, but also responsibility for a child's health insurance, uninsured medical and healthcare expenses, and any work-related daycare expenses) one would otherwise pay under the provisions of the Utah Code, that will almost surely be considered contrary to public policy and inequitable, and likely will not be enforced.</p>	

When does a premarital agreement become effective, binding?

Utah Code § 30-8-5. Effect of marriage -- Amendment -- Revocation.

(1) A premarital agreement becomes effective upon marriage.

(2) After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

What keeps a premarital agreement from being enforceable? What helps ensure that a premarital agreement *is* enforceable?

The provisions of the law are:	This means:
Utah Code § 30-8-6. Enforcement.	
(1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:	
<p>(a) that party did not execute the agreement voluntarily; or</p> <p>(b) the agreement was fraudulent when it was executed and, before execution of the agreement, that party:</p> <p style="padding-left: 40px;">(i) was not provided a reasonable disclosure of the property or financial obligations of the other party insofar as was possible;</p> <p style="padding-left: 40px;">(ii) 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</p> <p style="padding-left: 40px;">(iii) did not have, or reasonably could not have had, an adequate</p>	<p>‘Makes sense.</p> <p>And it should not come as a surprise that it is often very easy to convince the court that an agreement was not voluntarily made or was “fraudulent” if the court wants to declare a premarital agreement unenforceable or wants to err on the side of caution, especially if enforcing a premarital agreement will work a hardship on the person he agreement would otherwise be enforced against. I know this might sound sexist (I assure you it is not), but what this means in practice is that where enforcement of a premarital agreement for a man would work a hardship on a woman, courts are more inclined to find premarital agreements unenforceable.</p> <p>One of the ways the court can deem a premarital agreement unenforceable is by always claiming, no matter how much</p>

The provisions of the law are:	This means:
knowledge of the property or financial obligations of the other party.	disclosure was made, that there was nevertheless an inadequate/unreasonable

disclosure of “the property or financial obligations of the other party.”

So if you want your premarital agreement to have as many teeth as possible, make sure (among other things) that:

1) you bend over backward to disclose your property and financial obligations in exhaustive, ludicrous detail;

2) and despite bending over backward to disclose your property and financial obligations in exhaustive, ludicrous detail, you nevertheless obtained from your intended a ludicrously clear and detailed, unmistakable statement in the premarital agreement that he/she voluntarily and expressly waives any right to disclosure of the property or financial obligations of the other party beyond the disclosures provided;

3) your premarital agreement states very clearly that each of you enters into the agreement fully aware of what you are doing, fully aware of the legal effect of what you are doing, that you are doing so voluntarily, that you fully understand that you cannot foresee the future, and that both of you nevertheless agree to be bound by the terms of your premarital agreement anyway. Some ways to do this are:

a) to ensure that your fiancé receives the premarital agreement well in advance of the wedding date, so that he/she cannot complain of having been rushed or subject to undue influence in reviewing and signing. Make sure that you can document when your fiancé was given a copy of the premarital agreement, so that you can establish the date he/she first came into possession of it.

The provisions of the law are:	This means:
<p>b) have your fiancé review the premarital agreement with independent legal counsel prior to signing, and if your fiancé refuses to review the premarital agreement with independent legal counsel, make sure that this fact is unequivocally stated in the premarital agreement, i.e., that your fiancé was given the opportunity to review the premarital agreement with independent legal counsel, but chose not to do so.</p>	
<p>(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.</p>	<p>As I mentioned above, state legislatures and courts have a deep-seated aversion to upholding a provision in a premarital agreement that would work a financial hardship on a spouse resulting from an award of scanty or no alimony.</p>
<p>(3) An issue of fraud of a premarital agreement shall be decided by the court as a matter of law.</p>	<p>This means that whether the court finds there has been fraud is a question for the judge, and not for the jury.</p>
<p>Utah Code § 30-8-7. Enforcement -- Void marriage.</p>	
<p>If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.</p>	<p>This provision is self-explanatory, and it shouldn't surprise you that there is no case law in Utah construing the meaning of this section of the Utah Code because it hasn't come up yet on appeal.</p>

How soon after a premarital agreement is violated must someone file a lawsuit to enforce it?

Utah Code § 30-8-8. Limitations of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement.