

FAMILY CODE

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 4. PREMARITAL AND MARITAL PROPERTY AGREEMENTS

SUBCHAPTER A. UNIFORM PREMARITAL AGREEMENT ACT

Sec. 4.001. DEFINITIONS. In this subchapter:

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

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

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.002. FORMALITIES. A premarital agreement must be in writing and signed by both parties. The agreement is enforceable without consideration.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.003. CONTENT. (a) The parties to a premarital agreement may contract with respect to:

(1) 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;

(2) 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;

(3) the disposition of property on separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the modification or elimination of spousal support;

(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) the ownership rights in and disposition of the death benefit from a life insurance policy;

(7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

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

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.004. EFFECT OF MARRIAGE. A premarital agreement becomes effective on marriage.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.005. AMENDMENT OR REVOCATION. 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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.006. ENFORCEMENT. (a) A premarital agreement is not enforceable if the party against whom enforcement is requested proves that:

(1) the party did not sign the agreement voluntarily; or

(2) the agreement was unconscionable when it was signed and, before signing the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) 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

(C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

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

(c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.007. ENFORCEMENT: VOID MARRIAGE. 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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.008. LIMITATION OF ACTIONS. A 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. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.009. APPLICATION AND CONSTRUCTION. This subchapter shall be applied and construed to effect its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting these provisions.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.010. SHORT TITLE. This subchapter may be cited as the Uniform Premarital Agreement Act.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

## SUBCHAPTER B. MARITAL PROPERTY AGREEMENT

Sec. 4.101. DEFINITION. In this subchapter, "property" has the meaning assigned by Section 4.001.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.102. PARTITION OR EXCHANGE OF COMMUNITY PROPERTY.

At any time, the spouses may partition or exchange between themselves all or part of their community property, then existing or to be acquired, as the spouses may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes that spouse's separate property. The partition or exchange of property may also provide that future earnings and income arising from the transferred property shall be the separate property of the owning spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by Acts 2003, 78th Leg., ch. 230, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 477 (H.B. 202), Sec. 1, eff. September 1, 2005.

Sec. 4.103. AGREEMENT BETWEEN SPOUSES CONCERNING INCOME OR PROPERTY FROM SEPARATE PROPERTY. At any time, the spouses may agree that the income or property arising from the separate property that is then owned by one of them, or that may thereafter be acquired, shall be the separate property of the owner.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.104. FORMALITIES. A partition or exchange agreement under Section 4.102 or an agreement under Section 4.103 must be in writing and signed by both parties. Either agreement is enforceable without consideration.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 477 (H.B. 202), Sec. 2, eff. September 1, 2005.

Sec. 4.105. ENFORCEMENT. (a) A partition or exchange agreement is not enforceable if the party against whom enforcement is requested proves that:

(1) the party did not sign the agreement voluntarily; or

(2) the agreement was unconscionable when it was signed and, before execution of the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) 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

(C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a partition or exchange agreement shall be decided by the court as a matter of law.

(c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 4.106. RIGHTS OF CREDITORS AND RECORDATION UNDER PARTITION OR EXCHANGE AGREEMENT. (a) A provision of a partition or exchange agreement made under this subchapter is void with respect to the rights of a preexisting creditor whose rights are intended to be defrauded by it.

(b) A partition or exchange agreement made under this subchapter may be recorded in the deed records of the county in which a party resides and in the county in which the real property affected is located. An agreement made under this subchapter is constructive notice to a good faith purchaser for value or a creditor without actual notice only if the instrument is acknowledged and recorded in the county in which the real property is located.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

SUBCHAPTER C. AGREEMENT TO CONVERT SEPARATE PROPERTY TO COMMUNITY PROPERTY

Sec. 4.201. DEFINITION. In this subchapter, "property" has

the meaning assigned by Section 4.001.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

Sec. 4.202. AGREEMENT TO CONVERT TO COMMUNITY PROPERTY. At any time, spouses may agree that all or part of the separate property owned by either or both spouses is converted to community property.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

Sec. 4.203. FORMALITIES OF AGREEMENT. (a) An agreement to convert separate property to community property:

- (1) must be in writing and:
  - (A) be signed by the spouses;
  - (B) identify the property being converted; and
  - (C) specify that the property is being converted to the spouses' community property; and
- (2) is enforceable without consideration.

(b) The mere transfer of a spouse's separate property to the name of the other spouse or to the name of both spouses is not sufficient to convert the property to community property under this subchapter.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

Sec. 4.204. MANAGEMENT OF CONVERTED PROPERTY. Except as specified in the agreement to convert the property and as provided by Subchapter B, Chapter 3, and other law, property converted to community property under this subchapter is subject to:

- (1) the sole management, control, and disposition of the spouse in whose name the property is held;
- (2) the sole management, control, and disposition of the spouse who transferred the property if the property is not subject to evidence of ownership;
- (3) the joint management, control, and disposition of the spouses if the property is held in the name of both spouses; or
- (4) the joint management, control, and disposition of the spouses if the property is not subject to evidence of ownership and was owned by both spouses before the property was converted to

community property.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

Sec. 4.205. ENFORCEMENT. (a) An agreement to convert property to community property under this subchapter is not enforceable if the spouse against whom enforcement is sought proves that the spouse did not:

- (1) execute the agreement voluntarily; or
- (2) receive a fair and reasonable disclosure of the legal effect of converting the property to community property.

(b) An agreement that contains the following statement, or substantially similar words, prominently displayed in bold-faced type, capital letters, or underlined, is rebuttably presumed to provide a fair and reasonable disclosure of the legal effect of converting property to community property:

"THIS INSTRUMENT CHANGES SEPARATE PROPERTY TO COMMUNITY PROPERTY. THIS MAY HAVE ADVERSE CONSEQUENCES DURING MARRIAGE AND ON TERMINATION OF THE MARRIAGE BY DEATH OR DIVORCE. FOR EXAMPLE:

"EXPOSURE TO CREDITORS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO THE LIABILITIES OF YOUR SPOUSE. IF YOU DO NOT SIGN THIS AGREEMENT, YOUR SEPARATE PROPERTY IS GENERALLY NOT SUBJECT TO THE LIABILITIES OF YOUR SPOUSE UNLESS YOU ARE PERSONALLY LIABLE UNDER ANOTHER RULE OF LAW.

"LOSS OF MANAGEMENT RIGHTS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO EITHER THE JOINT MANAGEMENT, CONTROL, AND DISPOSITION OF YOU AND YOUR SPOUSE OR THE SOLE MANAGEMENT, CONTROL, AND DISPOSITION OF YOUR SPOUSE ALONE. IN THAT EVENT, YOU WILL LOSE YOUR MANAGEMENT RIGHTS OVER THE PROPERTY. IF YOU DO NOT SIGN THIS AGREEMENT, YOU WILL GENERALLY RETAIN THOSE RIGHTS."

"LOSS OF PROPERTY OWNERSHIP. IF YOU SIGN THIS AGREEMENT AND YOUR MARRIAGE IS SUBSEQUENTLY TERMINATED BY THE DEATH OF EITHER SPOUSE OR BY DIVORCE, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME THE SOLE PROPERTY OF YOUR SPOUSE OR YOUR SPOUSE'S HEIRS. IF YOU DO NOT SIGN THIS

AGREEMENT, YOU GENERALLY CANNOT BE DEPRIVED OF OWNERSHIP OF YOUR SEPARATE PROPERTY ON TERMINATION OF YOUR MARRIAGE, WHETHER BY DEATH OR DIVORCE."

(c) If a proceeding regarding enforcement of an agreement under this subchapter occurs after the death of the spouse against whom enforcement is sought, the proof required by Subsection (a) may be made by an heir of the spouse or the personal representative of the estate of that spouse.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.

Amended by Acts 2003, 78th Leg., ch. 230, Sec. 3, eff. Sept. 1, 2003.

Sec. 4.206. RIGHTS OF CREDITORS; RECORDING. (a) A conversion of separate property to community property does not affect the rights of a preexisting creditor of the spouse whose separate property is being converted.

(b) A conversion of separate property to community property may be recorded in the deed records of the county in which a spouse resides and of the county in which any real property is located.

(c) A conversion of real property from separate property to community property is constructive notice to a good faith purchaser for value or a creditor without actual notice only if the agreement to convert the property is acknowledged and recorded in the deed records of the county in which the real property is located.

Added by Acts 1999, 76th Leg., ch. 692, Sec. 3, eff. Jan. 1, 2000.