

# ALBUQUERQUE DIVORCE LAWYER BLOG

PUBLISHED BY

**COLLINS & COLLINS, P.C.**

ATTORNEYS AT LAW

May 26, 2010

## **Prenuptial Agreements in New Mexico**

Prenuptial agreements (also called premarital or antenuptial agreements) have been recognized and enforced by the New Mexico courts for many years. However, in 1995 the New Mexico legislature passed the Uniform Premarital Agreement Act, which provides specific rules for the formation and enforcement of prenuptial agreements and includes requirements that all prenuptial agreements must be in writing and its terms must be fair. Failure to follow the rules can result in difficulty enforcing the agreement in case of the later divorce of the parties. In case of a divorce, the validity of the agreement will affect the division of property and debt and alimony among other issues.

In order to avoid a determination that a prenuptial agreement is grossly unfair to one party, both parties should have legal representation when negotiating a prenuptial agreement, there should be full disclosure of both parties' income and assets and the prenuptial agreement should not be presented for negotiation to close the wedding date.

Following these suggestions can help bolster the validity of the prenuptial agreement by showing that both parties were fully informed of their rights when signing the agreement and that neither party was pressured to do so.

Although the general rule underlying prenuptial agreements is that competent adults are free to enter into whatever contracts they choose, with some limitations. In New Mexico, prenuptial agreements can cover the following topics: 1) present and future rights and obligations with respect to property, including income or earnings; 2) the right to manage, sell and encumber property; 3) division of property upon the death of either party or divorce; 4) the making of a will and power of attorney; 5) ownership and distribution of the proceeds from a life insurance policy; 6) the choice of law that will govern the agreement; and 7) anything other topic that does not violate the public policy of New Mexico.

While the rules governing prenuptial agreements may seem straightforward, they can be tricky, especially a determination of whether or not a provision violates public policy. Therefore, it is very important that both parties contemplating entering into a prenuptial agreement consult with a **New Mexico Divorce and Family Law Attorney** who can advise each party of their rights under New Mexico law and help ensure that a prenuptial agreement will stand up in Court if it is ever challenged.

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