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**2017 Edition**

# Premarital (Antenuptial) and Postnuptial Agreements in Connecticut

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A Guide to Resources in the Law Library

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# Introduction

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- **“Premarital agreement’** means an agreement between prospective spouses made in contemplation of marriage.” Conn. Gen. Stat. § [46b-36b](#)(1) (2017).
- **“An antenuptial agreement is a type of contract and must, therefore, comply with ordinary principles of contract law.”** [McHugh v. McHugh](#), 181 Conn. 482, 486, 436 A.2d 8 (1980).
- **“The validity of prenuptial contracts in Connecticut is governed, since October 1, 1995, by the Connecticut Premarital Agreement Act (act). General Statutes § 46b-36a et seq. Prior to the act, our Supreme Court had set forth the standards for determining the validity of a prenuptial agreement in *McHugh v. McHugh*, 181 Conn. 482, 436 A.2d 8 (1980) . . . .”** [Dornemann v. Dornemann](#), 48 Conn. Sup. 502, 510, 850 A.2d 273 (2004).
- Antenuptial agreements are also known as premarital agreements.
- **“The right of a child to support may not be adversely affected by a premarital agreement. Any provision relating to the care, custody and visitation or other provisions affecting a child shall be subject to judicial review and modification.”** Conn. Gen. Stat. § [46b-36d](#)(c) (2017).
- **“Today we are presented for the first time with the issue of whether a postnuptial agreement is valid and enforceable in Connecticut.”** [Bedrick v. Bedrick](#), 300 Conn. 691, 693, 17 A.2d 17 (2011).
- **“There is caselaw considering the enforcement of a Ketuba** or religious prenuptial agreement providing for continuous payments until the husband furnishes a Get [bill of divorcement]. ... The court in [Light v. Light](#), 2012 WL 3743605 (Conn. Super. Ct. 2012) enforced a prenuptial agreement in which the defendant agreed to pay the plaintiff \$100 per day in the event of their separation until such time as the defendant granted the plaintiff a Jewish religious **divorce.**” Jay M. Zitter, Annotation, *Application, Recognition, or Consideration of Jewish Law by Courts in the United States*, 81 ALR6<sup>th</sup> 1, Sec. 20 (2013). (Available in the Law Libraries via electronic database).
- Enforcement or avoidance of premarital or postnuptial agreement must be specifically pled:

**“(a) If a party seeks enforcement of a premarital agreement or postnuptial agreement, he or she shall specifically demand the enforcement of that agreement, including its date, within the party’s claim for relief. The defendant shall file said claim for relief within sixty days of the return date unless otherwise permitted by the court.**

(b) If a party seeks to avoid the premarital agreement or postnuptial agreement claimed by the other party, he or she shall, within sixty days of the claim seeking enforcement of the agreement, unless otherwise permitted by the court, file a reply specifically demanding avoidance of the agreement and stating the grounds thereof.” Connecticut Practice Book § [25-2A](#) (2017).

# Section 1: Current Premarital Agreement Law

A Guide to Resources in the Law Library

## **SCOPE**

- Bibliographic resources relating to the validity of premarital agreements in Connecticut following passage of the Connecticut Premarital Agreement Act.

## **DEFINITIONS:**

- **Connecticut Premarital Agreement Act:** "This act shall take effect October 1, 1995 and shall apply to any premarital agreement executed on or after that date." 1995 Conn. Acts 170 § 11 Reg. Sess.).
- **Premarital Agreement:** "means an agreement between prospective spouses made in contemplation of marriage." Conn. Gen. Stat. § [46b-36b](#)(1) (2017).
- **Property:** "means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, tangible or intangible, including income and debt." Conn. Gen. Stat. § [46b-36b](#)(2) (2017).
- **Purpose:** "The legislative history confirms that the purpose of the act is to recognize the legitimacy of premarital contracts in Connecticut, not to constrain such contracts to a rigid format so as to limit their applicability." Dornemann v. Dornemann, 48 Conn. Sup. 502, 519-520, 850 A.2d 273 (2004).
- **Fair And Reasonable Disclosure Of His Financial Circumstances:** "refers to the nature, extent and accuracy of the information to be disclosed, and not to extraneous factors such as the timing of the disclosure." Friezo v. Friezo, 281 Conn. 166, 183, 914 A.2d 533 (2007).
- **Reasonable Opportunity:** "With respect to whether the plaintiff had a 'reasonable opportunity' to consult with legal counsel, there is no requirement that a party actually seek or obtain the advice of counsel, only that he or she be afforded a *reasonable opportunity to do so.*" Friezo v. Friezo, 281 Conn. 166, 204, 914 A.2d 533 (2007).
- **Independent Counsel:** "a 'reasonable opportunity to consult with independent counsel' means simply that the party against whom enforcement is sought must have had sufficient time before the marriage to consult with an attorney other than the attorney representing the party's future spouse." Friezo v. Friezo, 281 Conn. 166, 204, 914 A.2d 533 (2007).

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Conn. Gen. Stat. (2017)

Connecticut Premarital Agreement Act

§ [46b-36a](#). Short title: Connecticut Premarital Agreement Act.

§ [46b-36b](#). Definitions.

§ [46b-36c](#). Form of premarital agreement.

§ [46b-36d](#). Content of premarital agreement.

§ [46b-36e](#). Effect of marriage on premarital agreement.

§ [46b-36f](#). Amendment or revocation of premarital

- agreement after marriage.
- § [46b-36g](#). Enforcement of premarital agreement.
- § [46b-36h](#). Enforcement of premarital agreement when marriage void.
- § [46b-36i](#). Statute of limitation re claims under premarital agreement.
- § [46b-36j](#). Premarital agreements made prior to October 1, 1995, not affected.

**LEGISLATIVE HISTORY:**

Legislative History (unofficial compilation)  
[Connecticut Premarital Agreement Act, Public Act 95-170](#)

**COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

Connecticut Practice Book (2017)

- § [25-2A](#). Premarital and Postnuptial Agreements

**“(a) If a party seeks enforcement of a premarital agreement or postnuptial agreement, he or she shall specifically demand the enforcement of that agreement, including its date, within the party’s claim for relief. The defendant shall file said claim for relief within sixty days of the return date unless otherwise permitted by the court.**

(b) If a party seeks to avoid the premarital agreement or postnuptial agreement claimed by the other party, he or she shall, within sixty days of the claim seeking enforcement of the agreement, unless otherwise permitted by the court, file a reply specifically demanding avoidance of the agreement and stating the grounds thereof.”

**FORMS:**

- Amy Calvo MacNamara, et al., eds., [Library of Connecticut Family Law Forms](#), (2014).  
 Chapter 18 Premarital Agreements  
     Form #18-001 Letter to Client Re: Draft Premarital Agreement  
     Form #18-002 Premarital Agreement
- 2 Alexander Lindey and Louis I. Parley, [Lindey and Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
 Chapter 110 Cohabitation Agreements, Part B. Forms
- 8A Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010).  
 Chapter 50 Sample Forms  
     §50: 57 Sample Prenuptial Agreement

**OLR REPORTS:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report’s publication. Current law may be different from what is discussed in the reports.

- Susan Price, Principal Legislative Analyst, Prenuptial Agreements: Declaratory Judgment Actions, Connecticut General Assembly, Office of Legislative Research, Report No. [2005-R-0834](#) (November 15, 2005).  
**“You asked if Connecticut or other states have a mechanism for determining whether a prenuptial agreement is valid before going forward with a divorce action. You also asked if any state uniformly requires divorcing couples to pay their own attorney’s fees.”**

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Chang v. Chang](#), 170 Conn.App. 822, 155 A.3d 1272, cert. denied, 325 Conn. 910, 158 A.3d 321 (2017).

**"We conclude that the court properly construed the premarital agreement as not precluding the award of alimony to the plaintiff. There is no provision in the agreement that even tangentially governs the parties' rights to alimony upon the dissolution of the marriage. In order for the plaintiff to assent to the waiver of such a right, she would have to be aware that, by signing the premarital agreement, she was relinquishing all claims to alimony in the event of a dissolution of the marriage."**

[page 830]

**"The [trial] court finds that the definition of separate property in the premarital agreement does not include accounts solely in the defendant's name which were not listed on schedule A of the premarital agreement unless received by bequest, devise, descent, or distribution by other instrument upon death or by gift or were property acquired in exchange for the property listed on schedule A. Accordingly, the orders in this decision would be the same even if it found the premarital agreement to be valid." (Emphasis added.)"**

[page 825]

- [Lodmell v. LaFrance](#), 154 Conn. App. 329, 330-331, 107 A.3d 975 (2014). **"...the parties entered into a prenuptial agreement (agreement).... Neither party contests the enforceability of the agreement. On March 15, 2010, the defendant commenced an action for dissolution of marriage. Section 16.20 of the agreement provides: 'In the event of any dispute hereunder, such dispute shall be resolved by first submitting the matter to mediation. If the mediation fails, then the matter shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.'** In the dissolution action, the court **...ordered the parties to proceed to arbitration on the matter of 'the sale of the joint asset, a residential piece of real estate, and what procedures are to be followed, and what proceeds each party is entitled to from a sale."**  
**"...Wilkerson [the arbitrator] issued a partial award...and a final award..., which are both the subject of this appeal."**
- [Friezo v. Friezo](#), 281 Conn. 166, 204, 914 A.2d 533 (2007). **"General Statutes § 46b-36g (a) (4) specifically provides that the party against whom enforcement of the prenuptial agreement is sought must prove that '[s]uch party was not afforded a reasonable opportunity to consult with independent counsel.'** The operative terms for the purpose of this analysis are **'reasonable opportunity'** and **'independent counsel.'** Although this court has not yet had occasion to construe § 46b-36g (a) (4), appellate courts that have interpreted identical statutory language invariably have held, consistent with the plain statutory wording, that **a 'reasonable opportunity to consult with independent**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

**counsel' means simply that the party against whom enforcement is sought must have had sufficient time before the marriage to consult with an attorney other than the attorney representing the party's future spouse."**

- [Dornemann v. Dornemann](#), 48 Conn. Sup. 502, 521, 850 A.2d 273 (2004). **"The plaintiff's claim that enforcement of the premarital agreement would be unconscionable has been reserved and will be addressed at the trial of the present case. The plaintiff executed a prenuptial agreement, after adequate financial disclosures, willingly and voluntarily. There was no coercion or undue influence. The defendant's failure to sign the contract prior to the marriage did not invalidate the contract. He assented to the bargain by marrying the plaintiff on April 13, 1997."**
- [Linger v. Sadowski](#), Superior Court, Judicial District of Hartford at Hartford, No. FA01-0728258 (May 31, 2002) (2002 WL 1492257). **"The defendant's arguments are persuasive. Section 46b-36g(3) does not require total accuracy in the disclosure of assets. It merely requires 'fair and reasonable disclosure.' This will vary from case to case depending upon various factors including the size of the total estate in comparison to the extent of the failure to disclose. In this case, the failure to disclose the real estate interest is neither unfair nor is it unreasonable in light of the size and character of the decedent's estate. The total value of the estate is actually greater than the value disclosed by the decedent although the character of the assets is slightly different. This is not unfair to the plaintiff."**
- [Pierce v. Pierce](#), Superior Court, Judicial District of Hartford at Hartford, No. FA 00-0725342 (Jul. 16, 2001) (2001 WL 950208). "The plaintiff claims that the agreement of the parties should control whereas the defendant argues against its enforcement. It should be noted that the defendant had entered into a pre-nuptial agreement in her previous marriage whereas the plaintiff had not. It is clear from the defendant's own testimony that all of the statutory criteria set forth in Connecticut General Statute Sec. 46b-36g(c). The defendant, however, claimed the plaintiff failed to mention he had a timeshare and had been married more times than he had told the defendant and she would not have married him otherwise. The timeshare omitted by the plaintiff in his premarital disclosure was worthless and was sold at a loss. Further, the court finds that the defendant would have married the plaintiff notwithstanding the number of his previous marriages. The defendant saw her marriage to the plaintiff as a way out of financial difficulty for her and her daughter."
- [Wilkes v. Wilkes](#), 55 Conn. App. 313, 319-320, 738 A.2d 758 (1999). **"The plaintiff claims that this "mid-nuptial" agreement should be considered the same as premarital agreements that are protected by General Statutes § 46b-36g with respect to disclosure. Section 46b-36g (a)(3),**  
Premarital and Postnuptial Agreements -7

which is applicable to premarital agreements executed on or after October 1, 1995, the effective date of Public Acts 1995, No. 95-170, precludes enforcement of a premarital agreement where, prior to execution, a party is "not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party...." The plaintiff asserts that, even if § 46b-36g does not apply, the agreement was not fair and equitable as required by General Statutes § 46b-66.5 There is no merit to this claim because § 46b-36g (a)(3) requires "fair and reasonable disclosure," as opposed to more formal financial affidavits, and the trial court had the benefit of formal financial affidavits at the time it decided that the agreement was fair and equitable."

**DIGESTS:**

- [West's Connecticut Digest: Marriage and Cohabitation](#)
  - II. Agreements Concerning Marriage.
    - § 162. Requisites and formation.
    - § 167. Validity and enforceability.
    - § 178. Terms of agreement; rights and obligations of parties.
    - § 183. Modification.
    - § 184. Revocation or extinguishment.
    - § 185. Actions and proceedings.
- [ALR Digest: Husband and Wife](#)
  - II. Marriage Settlements
    - § 29. Antenuptial settlements
- [Digest of United States Supreme Court Reports, L.Ed.: Husband and Wife](#)
  - §§ 33-37. Antenuptial Contracts; Marriage Settlements
- George, Cynthia. [Connecticut Family Law Citations](#)
  - Premarital and Postmarital Agreements
- *Marriage and Cohabitation* #s 161-200

**WEST KEY NUMBERS:**

**ENCYCLOPEDIAS:**

- 41 [Am. Jur. 2d: Husband and Wife](#) (2017).
  - 3. Property Settlements and Agreements
    - (a) Prenuptial Settlements and Agreements
      - § 81. Prenuptial settlements and agreements
      - § 82. Public policy
      - § 83. —Contemplation of dissolution or divorce
      - § 84. Enforceability of certain provisions
      - § 85. —Support, maintenance, or alimony upon divorce
      - § 86. Enactment of statutes, in general
      - § 87. Agreements under Uniform Premarital Agreement Act
      - § 88. Retroactive application of statute
      - § 89. Status as contract, generally
      - § 90. Formal requirements
      - § 91. Consideration
      - § 92. Fairness standards, generally
      - § 93. Fairness and unconscionability
      - § 94. Under the Uniform Premarital Agreement Act
      - § 95. Change in circumstances; infidelity; abandonment

- § 96. Confidential relationship
- § 97. Duty of disclosure
- § 98. —Extent of duty
- § 99. Fraud; misrepresentation
- § 100. Voluntariness
- § 101. —Conditioning marriage upon execution of agreement
- § 102. Independent legal advice
- § 103. General rules; liberal construction
- § 104. Intent of parties
- § 105. Introductory recitals; other rules
- § 106. Discharge; release; alteration by parties

- [ALR Index](#). Antenuptial Contracts and Agreements.
- James O. Pearson, Jr., *Failure to disclose extent or value of property owned as ground for avoiding premarital contract*. 3 [ALR 5th](#) 394.
- 41 [C.J.S.](#) *Husband and Wife* (2014).
  - III. Marital Agreements, Settlements, and Stipulations
  - E. Considerations Regarding Particular Types of Marital Agreements
  - 1. Prenuptial, Premarital, or Antenuptial Agreements or Settlements
    - § 122. Generally
    - § 123. Proper subject matter of agreement
    - § 124. [Validity], Generally
    - § 125. Existence and effect of confidential or fiduciary relationship between the parties
    - § 126. Necessity of independent legal counsel
    - § 127. Financial disclosure and independent knowledge
    - § 128. —Actual or constructive knowledge
    - § 129. —Inclusion of financial statement
    - § 130. [Consideration], Generally
    - § 131. Marriage
    - § 132. —For or against whom consideration operative
    - § 133. Form of antenuptial settlement, generally
    - § 134. Execution and acknowledgment
    - § 135. Delivery
    - § 136. Registration
    - § 137. [Construction], in general
    - § 138. Determination of rights
    - § 139. Termination, in general
    - § 140. Consideration
    - § 141. Effect of separation or divorce
    - § 142. Timing of commencement of action
    - § 143. Enforcement, generally
    - § 144. Evidence
    - § 145. —Presumptions
- 8 Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010). Chapter 32. Temporary Alimony
  - § 32:11 Effect of prenuptial or other agreements relating to alimony

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 8A Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010).  
Chapter 48. Premarital and Postnuptial Agreements
  - § 48:1. In general
  - § 48:2. Written or oral agreements
  - § 48:3. Effect of noncompliance with statute of frauds
  - § 48:4. Requisites for preparation and execution
  - § 48:5. Disclosure requirements
  - § 48:6. Legal representation in connection with agreement
  - § 48:7. Allowable purposes—Generally
  - § 48:8. Particular clauses—Generally
  - § 48:9. —Separate property
  - § 48:10. —Joint purchases and contracts
  - § 48:11. —Waiver of pension or retirement rights
  - § 48:11.50 – Waiver of alimony
  - § 48:12. Enforcement of agreements—Generally
  - § 48:13. General defenses to enforcement of agreements—Agreements governed by statute
  - § 48:14. General defenses to enforcement of agreements—Agreements governed by common law
  - § 48:15. Enforcement of agreements—Specific considerations
  - § 48:16. Amendment or revocation of agreements
  - § 48:17. Postnuptial agreements
- 2 Alexander Lindey and Louis I. Parley, [Lindey and Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
Chapter 110. Antenuptial (Premarital) Agreements
  - § 110.60. Definitions
  - § 110.61. Recognition
  - § 110.64. Formal requirements
  - § 110.65. Fraud, Duress, Undue Influence
  - § 110.66. Reasonableness; Unconscionability
  - § 110.67. Disclosure; Knowledge
- 5 Arnold H. Rutkin, [Family Law and Practice](#) (2017).  
Chapter 59. Antenuptial Agreements
  - § 59.01. History and Public Policy
  - § 59.02. Purpose
  - § 59.03. Negotiation; Setting the Stage
  - § 59.04. Execution and Validity of Agreements
  - § 59.05. Topics Included in Agreements
  - § 59.06. Rules of Enforcement, Modification or Avoidance
  - § 59.07. Effect of Divorce or Separation Decree
  - § 59.08. Declaratory Judgment; Arbitration and Mediation
- 9C [Uniform Laws Annotated](#), 35 (2001)  
Uniform Premarital Agreement Act
- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
  - Part II: Determining the Validity of Nuptial Agreements
  - Part III: Determining the Validity of a Premarital Agreement

## Agreement under the Premarital Agreement Act

- American Law Institute, [Principles of the Law of Family Dissolution](#) (2002).  
Chapter 7. Agreements  
    Topic 1. Introductory Provisions  
    Topic 2. Requirements for an Enforceable Agreement
- John Tingley and Nicholas B. Svalina, [Marital Property Law](#), Rev. 2d. (2017-2018 Ed.).  
**Chapter 24. Waiver of Rights to Widow's Allowance**  
I. Antenuptial Agreements  
Chapter 25. Antenuptial Agreement Affecting Property Rights on Separation or Divorce
- Brett R. Turner and Laura W. Morgan, [Attacking and Defending Marital Agreements](#) (2d ed. 2012).  
Chapter 8. Antenuptial Agreements: An Overview  
    Appendix C: Discovery for Premarital Agreements
- J. Thomas Oldham, *Would Enactment of the Uniform Premarital and Marital Agreements Act in All Fifty States Change U.S. Law Regarding Premarital Agreements?*, 46 Family Law Quarterly 367 (2012).
- Jerome H. Poliacoff, *What Does Love Have to Do With It?*, 33 Family Advocate 12 (2011).
- Paul S. Leinoff and Natalie S. Lemos, *The Perils of a Prenup: First Do No Harm-to Your Client or Yourself*, 33 Family Advocate 8 (2011).
- Amberlynn Curry, *The Uniform Premarital Agreement Act and its Variations Throughout the States*, 23 Journal of the American Academy of Matrimonial Lawyers 355 (2010).
- Jonathan E. Fields, *Forbidden Provisions in Prenuptial Agreements: Legal and Practical Considerations for the Matrimonial Lawyer*, 21 Journal of the American Academy of Matrimonial Lawyers 413 (2008).
- P. André Katz and Amanda Clayman, *When Your Elderly Clients Marry: Prenuptial Agreements and Other Considerations*, 16 Journal of the American Academy of Matrimonial Lawyers 445 (2000).

### **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

Table 1: Connecticut Premarital Agreement Act: House Debate

<b>38 H. R. Proc., Pt.9, 1995 Sess. (Appendix A)</b>	
"This bill establishes standards and guidelines for premarital agreements. It includes what agreements may have in them, what they can include, and also under what conditions the agreements will be <b>unenforceable.</b> "	p. 3210
"The bill specifically provides that a premarital agreement may not have any provisions which adversely affect a child of the marriage and <b>has other details with respect to premarital agreements.</b> "	p. 3210
" . . . with the enactment of this legislation, if someone had signed some other agreement or it didn't comply with this statute, would it have the legal effect of a contract anyway?" [Response: p. 3212]	p. 3212
" . . . how about a separate agreement made after the effective date that did not entirely comply with the legislation before us?" [Response: pp. 3212-3213]	p. 3212
" . . . what I'm attempting to get into the record here is whether this is a mandate that the only way you can have a premarital agreement in the state of Connecticut is by following this statute or whether or not two consenting adults following a standard contract type format could, in fact, enter into any type of agreement they care to and still be <b>valid.</b> " [Response: p. 3214]	p. 3213
" . . . If a particular clause did not fall within any of the categories in Number 3, would the parties be precluded from contracting freely and <b>openly with regard to that subject matter?</b> " [Response: p. 3217]	p. 3217.
"In Section 5 it provides that an agreement can be modified without consideration in writing after the marriage. So, in essence, <b>it's like a will. It's an executory contract</b> , I guess, that can be modified at any time by the parties without consideration.  . . . Is a premarital agreement during the course of the marriage <b>similar to a will in that it can be mutually modified in this way?</b> " [Response: pp. 3218-3219]	p. 3217
"Are there any standards contained in this bill which are not contained in the standards that we currently use for unconscionability? I mean would a court have to look to this bill or would the court look to existing law on unconscionability?" [Response: p. 3220]	p. 3219
"The only issue that would be removed from the consideration of a jury in terms of this contract would be the issue of unconscionability. All of these other issues, including whether there was fair and reasonable disclosure, whether there was a voluntary waiver, whether certain things had been complied with in section 6 would all be questions of fact to be determined by the trier of facts and not exclusively by the court. Is that correct? [Response: pp. 3221]	p. 3221
"An agreement that is in effect now, if an individual has an agreement that is in effect currently and modifies that agreement, which law would apply, the law at the time that the agreement was entered into or the law at the time that the agreement was modified? [Response: pp. 3222-3223]	p. 3222.

# Section 2: Postnuptial Agreement Law

A Guide to Resources in the Law Library

## **SCOPE**

- Bibliographic resources relating to the validity of postnuptial agreements in Connecticut.

## **FORMS:**

- 2 Alexander Lindey and Louis I. Parley, [Lindey and Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
Chapter 120. Postnuptial Agreements , Part B. Forms
- 1 Arnold H. Rutkin, [Family Law and Practice](#) (2017).  
Chapter 9. Postnuptial agreements  
§ 9.16.[2] Checklist: Provisions to be Included in a Property Settlement Agreement in an Ongoing Marriage  
§ 9.17.[1] Form: Property Settlement Agreement Without Intention to Separate

## **CASE LAW:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Bedrick v. Bedrick](#), 300 Conn. 691, 699, 17 A.2d 17 (2011).  
“...we now must consider what standards govern their [postnuptial agreements] enforcement. Neither the legislature nor **this court has addressed this question.**”
- **Consistent With Public Policy:** “ [B]oth the realities of our society and policy reasons favor judicial recognition of prenuptial agreements. Rather than inducing divorce, such agreements simply acknowledge its ordinariness. With divorce as likely an outcome of marriage as permanence, we see no logical or compelling reason why public policy should not allow two mature adults to handle their own **financial affairs.... The reasoning that once found them contrary to public policy has no place in today’s matrimonial law’** (Internal quotation marks omitted.) [Brooks v. Brooks](#), 733 P.2d 1044, 1050-51 (Alaska 1987). Postnuptial agreements are no different than prenuptial agreements in **this regard.**” [Bedrick v. Bedrick](#), 300 Conn. 691, 699, 17 A.2d 17 (2011). (Emphasis added.)
- **‘Special’ Scrutiny:** “The court opined that any attempt to limit the marital estate by a third party while the marriage is intact should be void, that if the agreement was intended to be a postnuptial agreement, it might not survive the **special scrutiny to be applied to such agreements....**”  
“The court treated the agreement as a postnuptial agreement. In doing so, it utilized the type of special scrutiny that applies to determine the enforceability of **postnuptial agreements.**” [Antonucci v. Antonucci](#), 164 Conn.App. 95,110, 138 A.3d 297 (2016).  
“**Because** of the nature of the marital relationship, the spouses to a postnuptial agreement may not be as cautious in contracting with one another as they would be with prospective spouses, and they are certainly less cautious than they would be with an ordinary contracting party. With lessened caution comes greater potential for one spouse to take advantage of the other. This leads us to conclude that postnuptial agreements require stricter scrutiny than

prenuptial agreements.” [Bedrick v. Bedrick](#), 300 Conn. 691, 703, 17 A.2d 17 (2011).

- **Standards:** “In applying special scrutiny, a court may enforce a postnuptial agreement only if it complies with applicable contract principles, and the terms of the agreement are both fair and equitable at the time of execution and not unconscionable at the time of dissolution.” [Bedrick v. Bedrick](#), 300 Conn. 691, 703-04, 17 A.2d 17 (2011).
- **Fair And Equitable At The Time Of Execution:** “...if the agreement is made voluntarily, and without any undue influence, fraud, coercion, duress or similar defect. Moreover, each spouse must be given full, fair and reasonable disclosure of the amount, character and value of property, both jointly and separately held, and all of the financial obligations and income of the other spouse. This mandatory disclosure requirement is a result of the deeply personal marital relationship.”

“....a court should consider the totality of the circumstances surrounding execution. A court may consider various factors, including ‘the nature and complexity of the agreement’s terms, the extent of and disparity in assets brought to the marriage by each spouse, the parties’ respective age, sophistication, education, employment, experience, prior marriages, or other traits potentially affecting the ability to read and understand an agreement’s provisions, and the amount of time available to each spouse to reflect upon the agreement after first seeing its specific terms...[and] access to independent counsel prior to consenting to the contract terms.’ Annot., 53 A.L.R.4<sup>th</sup> 92-93, §2 [a] (1987).” [Bedrick v. Bedrick](#), 300 Conn. 691, 704-705, 17 A.2d 17 (2011).

- **Unconscionable At The Time Of Dissolution:** “...[i]t is well established that [t]he question of unconscionability is a matter of law to be decided by the court based on all the facts and circumstances of the case.’ [Crews v. Crews](#), 295 Conn. 163 (2010).

Unfairness or inequality alone does not render a postnuptial agreement unconscionable; spouses may agree on an **unequal distribution of assets at dissolution...Instead, the** question of whether enforcement of an agreement would be unconscionable is analogous to determining whether enforcement of an agreement would work an injustice. [Crews v. Crews](#), 295 Conn. 163 (2010). Marriage, by its nature, is subject to unforeseeable developments, and no agreement can possibly anticipate all future events. Unforeseen changes in the relationship, such as having a child, loss of employment or moving to another state, may **render enforcement of the agreement unconscionable.”** [Bedrick v. Bedrick](#), 300 Conn. 691, 705-706, 17 A.2d 17 (2011).

- **Adequate Consideration:** "...A release by one spouse of his or her interest in the estate of the other spouse, in exchange for a similar release by the other spouse, may constitute adequate consideration." [Bedrick v. Bedrick](#), 300 Conn. 691, 704 [fn5], 17 A.2d 17 (2011).

### **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

Connecticut Practice Book (2017).

- § [25-2A](#). Premarital and Postnuptial Agreements  
**"(a) If a party seeks enforcement of a premarital agreement or postnuptial agreement, he or she shall specifically demand the enforcement of that agreement, including its date, within the party's claim for relief. The defendant shall file said claim for relief within sixty days of the return date unless otherwise permitted by the court.**  
  
 (b) If a party seeks to avoid the premarital agreement or postnuptial agreement claimed by the other party, he or she shall, within sixty days of the claim seeking enforcement of the agreement, unless otherwise permitted by the court, file a reply specifically demanding avoidance of the agreement and stating the grounds thereof."

### **DIGESTS:**

- [West's Connecticut Digest: Marriage and Cohabitation](#)  
 II. Agreements Concerning Marriage.  
     § 131. In general.  
     § 132. Requisites and formation.  
     § 137. Validity and enforceability.  
     § 138. Terms of agreement; rights and obligations of parties.  
     § 144. Right of action; effect of statute.
- [ALR Digest: Husband and Wife](#)  
 II. Marriage Settlements  
     § 30. Postnuptial settlements
- **George, Cynthia.** [Connecticut Family Law Citations](#)  
 Premarital and Postmarital Agreements

### **WEST KEY NUMBERS:**

- *Marriage and Cohabitation* #s 131-160

### **ENCYCLOPEDIAS:**

- 41 [Am. Jur. 2d Husband and Wife](#) (2017).  
 3. Property Settlements and Agreements  
 (b) Postnuptial Settlements and Agreements  
     § 107. Postnuptial settlements and agreements, generally; validity  
     § 108. Purposes; uses  
     § 109. Applicability of standards applying to premarital agreements  
     § 110. Status as contract  
     § 111. Formal requisites  
     § 112. Consideration  
     § 113. Fairness voluntariness, and unconscionability of postnuptial agreements, generally  
     § 114. Duty of disclosure  
     § 115. Representation by counsel

- [ALR Index](#). Postnuptial agreements.
  - Ann K. Wooster, Annotation, *Validity of Postnuptial Agreements in Contemplation of Divorce*, 77 [ALR6th](#) 293 (2012).
  - Ann K. Wooster, Annotation, *Validity of Postnuptial Agreements in Contemplation of Spouse's Death*, 87 [ALR6th](#) 495 (2013).
  - 41 [C.J.S. Husband and Wife](#) (2014).
    - III. Marital Agreements, Settlements, and Stipulations
      - E. Considerations Regarding Particular Types of Marital Agreements
        - 2. Postnuptial or Postmarital Settlements or Agreements
          - § 146. General considerations
          - § 147. Postnuptial settlements
          - § 148. [Validity], Generally
            - § 149. Existence and effect of confidential or fiduciary relationship between the parties
            - § 150. Necessity of independent legal counsel
            - § 151. Financial disclosure and independent knowledge
            - § 152. [Formal requisites], Generally
            - § 153. Registration or recording
            - § 154. [Consideration], Generally
            - § 155. Mutual promises of husband and wife
            - § 156. Rights of third parties
- 8A Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010). Chapter 48. Premarital and Postnuptial Agreements
  - § 48: 17. Postnuptial agreements
- 2 Alexander Lindey and Louis I. Parley, [Lindey and Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999). Chapter 120. Postnuptial Agreements
- 1 Arnold H. Rutkin, [Family Law and Practice](#) (2017). Chapter 9. Postnuptial Agreements
  - § 9.02[2]. Property Settlement Agreements
    - § 9.05. Real Property
    - § 9.06. Personal Property
    - § 9.07. Spousal Rights in Other Property
    - § 9.11. Agreement as to Testamentary Provisions
    - § 9.13. Enforcement
    - § 9.15. Questions that Illustrate the Danger Points Affecting the Validity of the Agreement
- Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017). Part IV: Assessing the Validity of Postnuptial Agreements
- John Tingley and Nicholas B. Svalina, [Marital Property Law](#), Rev. 2d. (2017-2018 Ed.). **Chapter 24. Waiver of Rights to Widow's Allowance**
  - II. Postnuptial Agreements

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Brett R. Turner and Laura W. Morgan, [Attacking and Defending Marital Agreements](#) (2d ed. 2012).  
Chapter 16. Postnuptial Agreements

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Bernardo G. Cuadra, *All Good Things Might Come to an End: Postnuptial Agreements in Connecticut*, 34 Western New England Law Review 57 (2012).

# Section 3: Prior Premarital Agreement Law

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to the validity of premarital agreements in Connecticut executed prior to October 1, 1995—the effective date of the Connecticut Premarital Agreement Act.

## **DEFINITIONS:**

- “The court’s first inquiry, then, is to ascertain whether the agreement complies with the ordinary principles of contract law and whether its terms and the circumstances surrounding its execution are such as to demonstrate that the parties were aware of their legal rights and their respective assets and liabilities, and proceeded by the agreement to alter those rights in a fair and voluntary manner.” [McHugh v. McHugh](#), 181 Conn. 482, 488, 436 A.2d 8 (1980).
- “It is clear that antenuptial agreements will not be enforced where to do so would violate the state statutes or public policy.” *Ibid.*
- **Validity:** “The validity of prenuptial contracts in Connecticut is governed, since October 1, 1995, by the Connecticut Premarital Agreement Act (act). General Statutes § 46b-36a et seq. **Prior to the act**, our Supreme Court had set forth the standards for determining the validity of a prenuptial agreement in *McHugh v. McHugh*, 181 Conn. 482, 436 A.2d 8 (1980), as follows: ‘The validity of an antenuptial contract depends upon the circumstances of the particular case. . . . Antenuptial agreements relating to the property of the parties, and more specifically, to the rights of the parties to that property upon the dissolution of the marriage, are generally enforceable where three conditions are satisfied: (1) the contract was validly entered into; (2) its terms do not violate statute or public policy; and (3) the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause **its enforcement to work injustice.**’ (Citation omitted.) *Id.*, 485-86. The act endorses, clarifies and codifies the McHugh standards.” [Dornemann v. Dornemann](#), 48 Conn. Sup. 502, 510-511, 850 A.2d 273 (2004). (Emphasis added.)

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).
  - § [45a-436](#). Succession upon death of spouse. Statutory share
  - § [52-550](#). Statute of frauds; written agreement or memorandum

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Crews v. Crews](#), 295 Conn. 153,157-158, 989 A.2d 1060 (2010). "The trial court determined that the antenuptial agreement was not governed by the provisions of the Connecticut Premarital Agreement Act (act), General Statutes § 46b-36a et seq., presumably because the act applies only to antenuptial agreements entered into on or after October 1, 1995; General Statutes § 46b-36a; and the parties had entered into their agreement on June 24, 1988. The trial court concluded, instead, that the antenuptial agreement was governed by the equitable rules established in *McHugh v. McHugh*, 181 Conn. 482, 436 A.2d 8 (1980)."
- [Pite v. Pite](#), Superior Court, Judicial District of New Haven at New Haven, No. FA99-0429262S (Feb. 20, 2001) (2001 WL 238144). "The existing statute in Connecticut which controls the enforceability of premarital agreements, the Connecticut Premarital Agreement Act, General Statutes § 46b-36a et seq., does not apply to any premarital agreement made prior to October 1, 1995. General Statutes § 46b-36j. Accordingly, the determination of the validity of the parties' prenuptial agreement in this case is governed by the common law."
- [McHugh v. McHugh](#), 181 Conn. 482, 436 A.2d 8 (1980). [Three Prong Test](#) of validity of antenuptial agreements.
- [Parniawski v. Parniawski](#), 33 Conn. Supp. 44, 46, 359 A.2d 719 (1976). "This state has placed its stamp of approval on a contract entered into in contemplation of marriage in which each prospective spouse released any claim to the property owned by the other at the time of the marriage or thereafter, agreeing that on the death of either, the survivor should have no claim to his or her property."

## **DIGESTS:**

- [West's Connecticut Digest: \*Marriage and Cohabitation\*](#)  
II. Agreements Concerning Marriage.  
§ 131. In general.  
§ 132. Requisites and formation.  
§ 137. Validity and enforceability.  
§ 138. Terms of agreement; rights and obligations of parties.  
§ 143. Modification or rescission.  
§ 144. Right of action; effect of statute.  
§ 150. Proceedings.
- [Digest of Decisions, Connecticut: \*Husband and Wife\*](#)  
§ 12. Antenuptial Agreements

## **WEST KEY NUMBERS:**

## **ENCYCLOPEDIAS:**

- *Marriage and Cohabitation* #s 131-160
- 41 [Am. Jur. 2d \*Husband and Wife\*](#) (2017).  
§88. Retroactive application of statute

## **TEXTS & TREATISES:**

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- 8A Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010).  
Chapter 48. Premarital and Postnuptial Agreements
  - § 48: 1. In general
  - § 48: 2. Written or oral agreements
  - § 48: 3. Effect of noncompliance with statute of frauds
  - § 48: 4. Requisites for preparation and execution
  - § 48: 5. Disclosure Requirements
  - § 48: 6. Legal representation in connection with agreement
  - § 48: 12. Enforcement of agreements—Generally
- 5 Arnold H. Rutkin, [Family Law and Practice](#) (2017).  
Chapter 59. Antenuptial Agreements
  - § 59.01. History and public policy
  - § 59.02. Purpose
- 2 Alexander Lindey and Louis I. Parley, [Lindey And Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
Chapter 110. Antenuptial (Prenuptial) Agreements
  - § 110.90. Common Law and Statutory Recognition of Premarital Agreements

## **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Michael A. Meyers, *The Requirements and Uses of Prenuptial and Postnuptial Agreements*, 4 Connecticut Family Law Journal 3 (November 1985).
- Lawrence P. Weisman, *The Value of Recognizing Antenuptial and Postnuptial Agreements in Pendente Lite Hearings*, 2 Connecticut Family Law Journal 34 (March 1984).
- Louis Parley, *Antenuptial Agreements In Connecticut: An Analysis Of McHugh v. McHugh*, 57 Connecticut Bar Journal 487 (December 1983).
- Arthur E. Balbirer and C. Ian McLachlan, *Survey of 1980 Developments in Connecticut Family Law*, 55 Connecticut Bar Journal 29 (February 1981).

Table 2: Three Prong Test

**McHugh v. McHugh, 181 Conn. 482, 485-486 (1980)**

"Antenuptial agreements relating to the property of the parties, and more specifically, to the rights of the parties to that property upon the dissolution of marriage, are generally enforceable where three conditions are satisfied:

(1) the contract was validly entered into;

(2) its terms do not violate statute or public policy; and

(3) the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause its enforcement **to work injustice.**"

# Section 4: Premarital Agreement Form and Content

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to the form and content of prenuptial agreements in Connecticut executed after October 1, 1995—the effective date of the Connecticut Premarital Agreement Act.

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).
  - § [46b-36c](#). Form of premarital agreement
  - § [46b-36d](#). Content of premarital agreement
  - § [52-550\(a\)](#). Statute of frauds; written agreement or memorandum

## **FORMS:**

- 9B [Am. Jur Legal Forms 2d Husband and Wife](#) (2017).
  - § 139:3. Form drafting guide
  - § 139:4. —Checklist—Matters to be considered in drafting antenuptial agreement
  - § 139:5. Formal requirements—Execution
  - § 139:6. —Acknowledgment
  - §§ 139:7 to 139:26. Basic agreements
  - §§ 139:27 to 139:95. Optional provisions
  - §§ 139:96 to 139:120. Transactions between husband and wife
  - §§ 139:121 to 139:127. Transaction with third parties by husband or wife
- Amy Calvo MacNamara, et al., eds., [Library of Connecticut Family Law Forms](#), (2014).
  - Form #18-001 Letter to Client Re: Draft Premarital Agreement
  - Form #18-002 Premarital Agreement
- 2 Alexander Lindey and Louis I. Parley, [Lindey and Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).
  - Chapter 110. Antenuptial (Premarital) Agreements
    - §§ 110.10-110.43. Forms
    - § 110.60. Definitions
    - § 110.61. Recognition
    - § 110.64. Formal Requirements
    - § 110.65. Fraud, Duress, Undue Influence
    - § 110.66. Reasonableness; Unconscionability
    - § 110.67. Disclosure; Knowledge
- Benjamin M. Becker et al., [Legal Checklists – Specially Selected Forms](#) (2014).
  - Chapter 14. Matrimonial Agreements
  - Form 14.3 Premarital Agreement

- 12 Jacob Rabkin and Mark H. Johnson, [Current Legal Forms](#) (2011).  
Chapter 10. Domestic Relations  
Prenuptial Agreements  
Forms 10.01 to 10.12
- 8A Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010).  
Chapter 50. Sample Forms, Clauses and Provisions  
§50:57 Sample prenuptial agreement
- Linda J. Ravdin, [Prenuptial Agreements](#) (2011).  
Part IV. Drafting the Agreement  
Chapter 13. Model title controls agreement with provisions for weaker party  
Chapter 14. Model terms for same-sex prenuptial agreement  
Chapter 15. Shared property agreement  
Appendix D. Basic title controls agreement  
Appendix E. Additional and optional terms
- Gary N. Skoloff et al., [Drafting Prenuptial Agreements](#) (2016) [includes CD-ROM].  
Part VII. Standard clauses for inclusion  
Part VIII. Sample prenuptial agreements  
Part XII. Practice pointers
- 7 [West's Legal Forms, 3d](#), Domestic Relations (2017).  
Chapter 10. Antenuptial Agreements  
B. Forms
  1. General Agreements
  2. Model Clauses

**DIGESTS:**

- [West's Connecticut Digest: \*Marriage and Cohabitation\*](#)  
II. Agreements Concerning Marriage  
§ 121-130. In general.  
§ 131-160. Agreements to marry; breach of marriage promise.  
§ 161-200. Prenuptial agreements.

- [Dowling's Connecticut Digest: \*Husband and Wife\*](#) § 12

- West Key Number:

**WEST KEY NUMBERS:**

- *Marriage and Cohabitation* #s 131-160

**ENCYCLOPEDIAS:**

- 41 [Am. Jur. 2d \*Husband and Wife\*](#) (2017).  
§ 90. Formal requirements  
§ 103. General rules; liberal construction  
§ 104. Intent of parties  
§ 105. Introductory recitals; other rules
- 41 [C.J.S. \*Husband and Wife\*](#) (2014).  
§ 133. Form of antenuptial settlement, generally  
§ 134. Execution and acknowledgment  
§ 135. Delivery

- § 136. Registration
- § 138. Determination of rights
- § 139. Termination, generally
- § 143. Enforcement, generally

- [ALR Digest](#) *Husband and Wife*

- II. Marriage Settlements

- §30. Postnuptial settlements

- 8A Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010).

- Chapter 48. Premarital and Postnuptial Agreements

- § 48: 1. In general

- § 48: 2. Written or oral agreements

- § 48: 3. Effect of noncompliance with statute of frauds

- § 48: 4. Requisites for preparation and execution

- § 48: 5. Disclosure requirements

- § 48: 7. Allowable purposes—Generally

- § 48: 8. Particular clauses—Generally

- § 48: 9. – Separate property

- § 48: 10. – Joint purchases and contracts

- § 48: 11. – Waiver of pension or retirement rights

- § 48: 11.50. – Waiver of alimony

- 2 Alexander Lindey and Louis I. Parley, [Lindey and Parley on Separation Agreements and Antenuptial Contracts](#) (2d 1999).

- Chapter 110. Antenuptial (Premarital) Agreements

- § 110.64. Formal Requirements

- [1]. Introduction

- [2]. Statute of Frauds

- [3]. Particular Statutes

- [4]. Execution

- [5]. Recording

- § 110.73. Construction

- § 110.76. Uniform Premarital Agreement Act

- [3]. Formalities

- [4]. Content

- 5 Arnold H. Rutkin, [Family Law and Practice](#) (2017).

- Chapter 59. Antenuptial Agreements

- § 59.04. Execution and Validity of Agreements

- § 59.05. Topics Included in Agreements

- [1] The Parties; Third-Party Beneficiaries

- [2] Recitals

- [3] Personal Property

- [4] Real Property

- [5] Expectancies

- [6] Contingencies

- [7] Intellectual Properties

- [8] Liabilities

- [9] Schedule of Financial Information and Relevant Documents

- [10] Notification to Third Parties

- [11] Valuation

- [12] Identification of Separate Property

- [13] Increases in Value After Signing

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- [14] Conveyances
  - [15] Waivers and Limitations
  - [16] Parental Rights and Responsibilities
  - [17] Lifestyle
  - [18] Life, Health, and Disability Insurance; Personal Injury Proceeds
  - [19] Employee Benefits
  - [20] Bankruptcy Considerations
  - [21] Applicable Law; Conflicts of Law
  - [22] Representation by Counsel
  - [23] Modification
  - [24] Waiver and Enforcement of Terms
  - [25] Other Terms
- 9C [Uniform Laws Annotated](#) 35 (2001).  
Uniform Premarital Agreement Act
  - Gary N. Skoloff et al., [Drafting Prenuptial Agreements](#) (2016) [includes CD-ROM].
    - Part I. Separate Property
    - Part II. Joint Property
    - Part III. Marital Residence
    - Part IV. Regulating The Marriage
    - Part V. Right Upon Divorce
    - Part VI. Rights Upon Death
    - Part VII. Standard Clauses For Inclusion
    - Part VIII. Sample Prenuptial Agreements
    - Part IX. Litigation Case Law Review
    - Part X. Negotiating Prenuptial Agreements
    - Part XI. The Uniform Acts
    - Part XIV. Estate Planning Considerations for Premarital Agreements
    - Part XV. Using Prenuptial Agreements to Protect **Children's Interests**
    - Part XVI. Prenuptial Agreements for Same-Sex Couples
  - 12 Jacob Rabkin and Mark H. Johnson, [Current Legal Forms](#) (2011).
    - § 10.09. Premarital Agreements
      - [1] **Establishing Spouse's Rights**
      - [2] Gifts Under Premarital Agreements
      - [3] Estate Taxation
  - Laura Weintraub Beck, et al., [Drafting Wills in Connecticut 3d](#), (2017-2018 ed.).
    - § 1:4. Prenuptial agreement
  - Linda J. Ravdin, [Premarital Agreements](#) (2011).
    - Chapter 3. Creating a Valid Agreement
    - Chapter 7. Ethics and Premarital Agreements
  - Louise Truax, editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2017).
    - Part V: Drafting Provisions in Prenuptial Agreements

## **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Peter M. Walzer and Jennifer M. Reimer, *Premarital Agreements for Seniors*, 50 Family Law Quarterly No. 95 Spring 2016.
- J. Thomas Oldham, *With All My Worldly Goods I Thee Endow, or Maybe Not: A Reevaluation of the Uniform Premarital Agreement Act After Three Decades*, 19 Duke Journal of Gender Law & Policy 83 (Fall, 2011)
- John S. Slowiaczek and Virginia A. Albers, *The Devil is in the Drafting: Sample Prenuptial Agreement Clauses to Capture Your Client's Goals and Expectations*, 33 Family Advocate 20 (2011).
- Stephanie B. Casteel, *Planning and Drafting Premarital Agreements*, 16 ALI-ABA Estate Planning Course Materials Journal 5 (April 2010).

# Section 5: Enforcement and Defenses

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to the enforcement of antenuptial agreements or prenuptial contracts in Connecticut including the Premarital Agreement Act.

## **DEFINITION:**

- **"An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law."** Conn. Gen. Stat. § [46b-36g](#) (c) (2017). [...effective October 1, 1995, and applicable to premarital agreements executed on or after that date.]

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017)  
Chapter 815e. Marriage  
§ [46b-36g](#). Enforcement of premarital agreement.  
[Effective October 1, 1995, and applicable to premarital agreements executed on or after that date.]  
§ [46b-36h](#). Enforcement of premarital agreement when marriage void.  
§ [46b-36i](#). Statute of limitations re claims under premarital agreement.  
§ [46b-36j](#). Premarital agreements made prior to October 1, 1995, not affected.

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Hornung v. Hornung](#), 323 Conn. 144, 146 A.3d 912 (2016). **"From the beginning of its decision, the trial court distinguished between the property distribution allowed under the prenuptial agreement and its broad authority to award alimony. Thereafter, the trial court explained that, 'under all the circumstances,' the purpose of the lump sum award was to provide 'continuing support' to the plaintiff — the quintessential purpose of alimony. See, e.g., Dombrowski v. Noyes-Dombrowski, 273 Conn. 127, 132, 869 A.2d 164 (2005). The purpose of a property distribution, by contrast, is 'to unscramble existing marital property in order to give each spouse his or her equitable share at the time of dissolution.'** (Internal quotation marks omitted.) Id. at 133, 869 A.2d 164; see also [Blake v. Blake](#), 211 Conn. 485, 497, 560 A.2d 396 (1989) ('[t]he difference between an assignment of a specific portion of an estate and alimony is in their purposes' [internal quotation marks omitted]). The trial court made no reference or allusion to this equitable purpose in making the lump sum alimony award, and instead divided the property in accordance with the agreement. The trial court also specifically cited § 46b-82, the alimony statute, and two judicial opinions in which lump sum alimony was properly awarded when making the lump sum alimony award. See [Maguire v. Maguire](#), 222 Conn. 32, 47, 608 A.2d 79 (1992) ('[a]ny ambiguity as to the criteria upon which the court relied for alimony was put to rest [when] the trial court indicated that it had relied upon the criteria in § 46b-82 for its award of alimony').

"In light of this language, the trial court's mere mention of two factors in the property distribution statute, namely, the plaintiff's opportunity to acquire assets in the future and her

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

contribution to the marital estate, did not render the lump sum award an improper property distribution.”

[pages 153-154]

“..., [W]e disagree with the defendant's contention that, because the combined alimony and child support payments exceed the plaintiff's claimed expenses, the lump sum alimony award is functionally a property distribution. The agreement's waiver of equitable distribution of property does not change this result. Although the agreement limited the court's discretion to distribute property, it did not limit the trial court's discretion to award alimony *in any way*. The agreement simply stated that “a court of competent jurisdiction shall address the issues of alimony and/or child support . . . in the event [of] . . . divorce. . . .” (Emphasis in original)

[page 167]

- [Beyor v. Beyor](#), 158 Conn. App. 752, 121 A.3d 734 (2015). “In its ... memorandum of decision, the court disagreed **with the defendant's contention** that the agreement was unconscionable and thus unenforceable under General Statutes § 46b-36g(a)(2). The court examined the agreement to determine unconscionability both at the time of its execution in 2006, and at the time enforcement was sought, in 2011. It determined that at neither point was the agreement or its enforcement unconscionable. The court noted that the plaintiff was wealthy in both 2006 and 2011, and, although the defendant had much more modest means than the plaintiff had at both times, the court found that the disparity in wealth between the parties was substantially the same in 2011 as it had been in 2006.”

[page 755]

“The defendant next argues that the court,..., abused its discretion...and that the court ... erred ...because the plaintiff had not provided adequate financial disclosure at the time the agreement was signed.”

[page 762]

“...the plaintiff in the present case disclosed the amount, character, and value of property, financial obligations and income, which allowed a fair view of **the plaintiff's overall** financial picture. There were no children of the marriage, and the agreement provided for no alimony.”

[pages 741-742]

- [Schoenborn v. Schoenborn](#), 144 Conn. App. 846, 854-855 (2013). “[A]ntenuptial agreements relating to the property of the parties, and more specifically, to the rights of the parties to that property upon the dissolution of the marriage, are generally enforceable ...[if] the circumstances of the parties at the time the marriage is dissolved **are not so beyond the contemplation** of the parties at the time the contract was entered into as to cause its enforcement to work injustice.” (Emphasis in original; internal quotation

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

marks omitted.) Crews v. Crews, 295 Conn. 153, 167-68, 989 A.2d 1060 (2010).

**"...the court concluded that "[d]espite the change in net worth of the [defendant] the court does not find the enforcement of the antenuptial agreement to be unconscionable.... The [plaintiff] at the time of the marriage knew his fiancée was completing her dental residency and she was a dentist at the time of the marriage. The increase in her income and a resultant increase in her net worth were certainly foreseeable."**

- Oldani v. Oldani, 132 Conn. App. 609, 624, 37 A.3d 173 (2012). **"Our Supreme Court has determined that, to be fair and reasonable, "a party's disclosure does not need to be exact but must at least provide a general approximation. Focusing on the information disclosed by the plaintiff, our plenary review of the record reveals that, although the plaintiff may have provided a sufficient approximation of his property holdings and other financial obligations, he failed to provide the defendant with sufficient information regarding his income prior to her signing the prenuptial agreement. Because the plaintiff failed to meet this burden to inform, it was not legally and logically correct for the court to have determined that the prenuptial agreement was enforceable."**

- Brody v. Brody, 136 Conn. App. 773, 790-791, 51 A.3d 1121(2012). **"The defendant argues that the court's requirement that he transfer to the plaintiff his interest in the Husted Lane property as security for the alimony award constitutes an impermissible transfer of legal title of his separate assets to the plaintiff. He asserts that the Husted Lane property is part of his premarital net worth under the parties' prenuptial agreement and that, accordingly, any order transferring his interest to the plaintiff is improper. This argument is without merit."**

**"Nothing in the parties' prenuptial agreement prevented the court from ordering that the Husted Lane property would serve as security for the court's alimony award under §46b-82. The prenuptial agreement, by its clear terms, is concerned with equitable distributions of property under § 46b-81, not alimony awards. The court was free to order, within its broad discretion to make alimony awards, that the defendant's interest in the Husted Lane property would serve as security for his alimony obligation."**

- Light v. Light, Superior Court, Judicial District of New Haven at New Haven, No. FA12-4051863-S (Dec. 6, 2012) (55 Conn. L. Rptr. 145) (2012 WL 6743605). **"According to the plaintiff, the United States Supreme Court determined that courts have power to resolve disputes between religious parties so long as the court can do so based on neutral principles of law."**  
[page 146]

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"The issue presented to this court appears to be one of first impression in Connecticut."  
[page 147]

"In the present case, a determination as to whether a prenuptial agreement is enforceable would not require the court to delve into religious issues. Determining whether the defendant owes the plaintiff the specified sum of money does not require the court to evaluate the proprieties of religious teachings. Rather, the relief sought by the plaintiff is simply to compel the defendant to perform a secular obligation...."  
[page 148-49]

- [Reizfeld v. Reizfeld](#), 125 Conn. App. 782,791-792, 40 A.3d 320 (2011). "Thus, because the court found that the parties' agreement was enforceable, and because we conclude that the term "liabilities" as used in paragraph 5 of the agreement includes attorney's fees, the plaintiff was precluded from seeking the payment of her attorney's fees from the defendant. By ordering the defendant to pay the trial attorney's fees of the plaintiff in the amount of \$7500 and appellate attorney's fees in the amount of \$6000, the court abused its discretion. We therefore reverse the judgment of the trial court with respect to the award of attorney's fees and remand the case with direction to amend the judgment to enter orders denying the plaintiff attorney's fees."
- [Winchester v. McCue](#), 91 Conn. App. 721,727-728, 882 A.2d 143, 147 (2005). "**Testimony revealed... that the parties dated for several years before they were married. Neither party disputes that during the courtship, that parties shared expenses and became knowledgeable of the other's standard of living and spending habits.** As noted in *McHugh*, failure to disclose financial information in the prenuptial agreement is not fatal so long as the other party has independent knowledge of the same.' The court observed in its decision that although neither party had expressly disclosed their respective incomes on the financial statements annexed to the agreement, the agreement was **nevertheless valid because the parties had 'independent knowledge,'...**"
- [Friezo v. Friezo](#), 281 Conn. 166, 186, 914 A.2d 533 (2007). "**In *McHugh*, this court articulated the principle that , because the parties to a prenuptial agreement stand in a relationship of mutual confidence, '[t]he duty of each party to disclose the amount, character, and value of individually owned property, absent the other's independent knowledge of the same, is an essential prerequisite to a valid antenuptial agreement containing a waiver of property rights....The burden is not on either party to inquire, but on each to inform,** for it is only by requiring full disclosure of **the amount, character, and value of the parties' respective assets that courts can ensure intelligent waiver of the statutory rights involved.'** (Emphasis added. Citations Premarital and Postnuptial Agreements -30

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

omitted; internal quotation marks omitted.) [McHugh v. McHugh](#), supra, 181 Conn. [482,] 486-87.”

- [Dornemann v. Dornemann](#), 48 Conn Supp. 502, 503, 850 A.2d 273 (2004). “**The plaintiff asserts that the** premarital agreement is unenforceable for four reasons. First, written financial disclosures were not attached to it. Second, it was executed by the plaintiff as the result of undue influence and lack of free will. Third, it was not signed by the defendant and, therefore, was not in proper form. Fourth, and finally, it was not delivered to the plaintiff after signature by the defendant.”

“The plaintiff’s claim that enforcement of the premarital agreement would be unconscionable has been reserved and will be addressed at the trial of this case. The plaintiff executed a prenuptial agreement after adequate financial disclosures, willingly and voluntarily. There was no coercion or undue influence. The defendant’s failure to sign the contract prior to the marriage did not invalidate the contract. He assented to the bargain by marrying the plaintiff on April 13, 1997.

The plaintiff’s motion in limine to preclude evidence of the Premarital Agreement is denied.”

- [DeFusco v. DeFusco](#), Superior Court, Judicial District of Hartford-New Britain at Hartford, No. FA87 33 88 48 (Jan. 14, 1991) (3 Conn. L. Rptr. 145, 150) (1991 WL 27854). “2. The Plaintiff was not fully informed by Defendant of the amount, character, and value of the estate. **3...Plaintiff first** saw the final draft minutes before she signed it. 4. Plaintiff was not represented by counsel at any time during the **preparation and execution of the document...** On all of the evidence it is found that the ante-nuptial agreement is invalid and unenforceable.”
- [McHugh v. McHugh](#), 181 Conn. 482, 436 A.2d 82, 436 A.2d 82 (1980). [Three prong test of validity of prenuptial agreements](#).

## **DIGESTS:**

- [West’s Connecticut Digest: \*Marriage and Cohabitation\*](#)  
 II. Agreements Concerning Marriage  
 § 137. Validity and enforceability.  
 § 143. Modification or rescission.  
 § 144. Right of action; effect of statute.  
 § 147. Nature and form of action.  
 § 148. Conditions precedent to action.  
 § 149. Defenses.  
 § 150. Proceedings

## **TEXTS & TREATISES:**

- 8A Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010).  
 Chapter 48. Premarital and Postnuptial Agreements  
 § 48: 5. Disclosure requirements  
 § 48: 6. Legal representation in connection with agreement  
 § 48: 7. Allowable purposes—Generally  
 § 48: 12. Enforcement of agreements—Generally

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§ 48:13. General defenses to enforcement of agreements—Agreements governed by statute  
§ 48:14. General defenses to enforcement of agreements— Agreements governed by common law  
§ 48:15. Enforcement of agreements—Specific considerations  
§ 48:17 Postnuptial agreements

- 5 Arnold H. Rutkin, [Family Law and Practice](#) (2017).  
Chapter 59. Antenuptial agreements  
§ 59.04. Execution and Validity of Agreements  
§ 59.06. Rules of Enforcement, Modification or Avoidance  
§ 59.07. Effect of Divorce or Separation Decree  
§ 59.08. Declaratory Judgment; Arbitration and Mediation
- 2 Alexander Lindey and Louis I. Parley, [Lindey And Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
Chapter 110. Antenuptial (Premarital) Agreements  
§ 110.65. Fraud, Duress, Undue influence  
§ 110.66. Reasonableness; Unconscionability  
§ 110.67. Disclosure; Knowledge  
§ 110.68. Counsel  
§ 110.69. Public Policy  
§ 110.71. Burden of Proof  
§ 110.75. Breach; Remedies; Defenses  
§ 110.76. Uniform Premarital Agreement Act [7]. Enforcement
- John Tingley and Nicholas B. Svalina, [Marital Property Law](#), Rev. 2d. (2017-2018 Ed.).  
Chapter 25. Antenuptial agreement Affecting Property Rights on Separation or divorce  
§ 25.14. Enforceability as affected by public policy concerns stemming from prohibition against promoting or encouraging divorce  
§ 25.15. Enforceability as affected by change in circumstances of parties  
§ 25.16. Estoppel to challenge agreement  
§ 25.17. Enforceability as affected by other policy concerns  
Chapter 26. Postnuptial and Separation Agreements  
Chapter 27. Postnuptial Agreement Releasing Rights of Surviving Spouse  
Chapter 28. Declaratory Judgment as to Construction of Antenuptial Agreement  
Chapter 29. Nondisclosure of Property Interests When Making Antenuptial Agreements  
Chapter 30. Form of Execution or Acknowledgement as Affecting Validity of Antenuptial Agreement
- Ralph H. Folsom and Michael P. Kaelin, [Probate Litigation in Connecticut](#) (3d ed. 2017).  
Chapter 1. Will and Lifetime Transfer Contests  
§ 1:27. Premarital agreements

**ENCYCLOPEDIAS:**

- James L. Buchwalter, *Cause of Action to Enforce Rights Under Postnuptial Agreement*, 79 [COA2d](#) 107 (2017).
- Jay M. Zitter, Annotation, *Application, Recognition, or Consideration of Jewish Law by Courts in the United States*, 81 [ALR6th](#) 1 (2013). (Available in the Law Libraries via electronic database).

III. Family Law and Related Proceedings

B. **Wife's** Monetary Rights Under Ketuba or Similar Religious Prenuptial Agreement

§20. Enforcing provision requiring husband's continuing payment until Get [Bill of divorcement] furnished

Cases cited:

- o [Light v. Light](#), Superior Court, Judicial District of New Haven at New Haven, No. FA12-4051863-S (Dec. 6, 2012) (55 Conn. L. Rptr. 145) (2012 WL 6743605).
- o [Lashgari v. Lashgari](#), 197 Conn. 189, 496 A.2d 491 (1985).

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Cheryl I. Foster, *When Prenup and Religious Principles Collide: Anticipating Faith, Marriage, and the Possibility of Divorce*, 33 Family Advocate 34 (2011).
- William H. DaSilva, *Making it Stick: The 5 Requisites of an Enforceable Agreement*, 33 Family Advocate 27 (2011).

Table 3: Surveys of State Premarital Agreement Laws

Subject	Source
<b>Adoption of Uniform Premarital Agreement Act</b>	* Lindey § 110.92. Footnote 1
<b>Affirmative Duty to Disclose Information</b>	*Lindey § 110.67[2].
<b>Allocation of Burden of Proof if Agreement Facially Unfair</b>	* Lindey § 110.71[1].
<b>Public Policy Violations Relating to Child Custody, Child Support, Spousal Support, Property and Estate Interests</b>	*Lindey § 110.69.
<b>Reasonableness</b>	*Lindey § 110.66[1]. Footnote 1 lists states which evaluate the reasonableness for wife. Footnote 3, states requiring to both husband and wife.
<b>Recognition of Alimony Provisions</b>	* Lindey § 110.70[2][d]. Footnote 20
<b>Recognition of Premarital Agreements</b>	*Lindey § 110.61; 110.90. Footnote 1 lists states which recognize the validity of premarital agreements using <b>common law</b> . § 110.90. Footnote 2 by <b>statute</b> . **Skoloff Part XIII-MA. Premarital Agreement Law in Massachusetts
<b>Recognition of Property Division Provisions</b>	* Lindey § 110.70[2][c].
<b>Requirement of Written Agreement</b>	* Lindey § 110.91. Footnote 1 lists states where statute of frauds requires agreement to be in writing. § 110.92. Footnote 2 lists states with a particular premarital agreement statute. **Skoloff Part XIII-NY. Premarital Agreement Law in New York

\* 2 Alexander Lindey and Louis I. Parley, [Lindey And Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
Chapter 110. Antenuptial (Premarital) Agreements.

\*\* Gary N. Skoloff et al., [Drafting Prenuptial Agreements](#) (2016) [includes CD-ROM].

# Section 6: Modification or Revocation

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to the modification and revocation of prenuptial agreements or contracts in Connecticut including those executed under the Premarital Agreement Act.

## **DEFINITIONS:**

- **Amending or revoking:** "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 shall be enforceable without consideration." **Conn. Gen. Stat. § 46b-36f** (2017). [Effective October 1, 1995 and applicable to premarital agreements executed on or after that date].
- **Appellate Standard of Review:** "An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the **correctness of its action.**" (Internal quotation marks omitted.) *Aley v. Aley*, 101 Conn. App. 220, 223, 922 A.2d 184 (2007). [Rosier v. Rosier](#), 103 Conn. App. 338, 928 A.2d 1228 (2007).

## **STATUTES:**

Once you have identified useful cases, it is important to update them to ensure they are still good law. You can [contact your local law librarian](#) to learn about updating cases.

- Conn. Gen. Stat. (2017)  
Chapter 815e. Marriage  
§ [46b-36f](#). After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties.

## **FORMS:**

- 2 Alexander Lindey and Louis I. Parley, [Lindey And Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
Chapter 110. Antenuptial (Premarital) Agreements  
§ 110.32. Amendment—Form  
§ 110.39. Cancellation of Antenuptial Agreement—Form  
§ 110.40. "Sunset" Provision—Form
- Gary N. Skoloff et al., [Drafting Prenuptial Agreements](#) (2016) [includes CD-ROM].  
Appendix 3: Amendments or Addenda to Prenuptial Agreements  
Appendix 4: Revocation of Prenuptial Agreement

## **CASES:**

- [Peterson v. Sykes-Peterson](#), 133 Conn. App. 660, 664-65, 37 A.3d 173 (2012). "Article XII of the prenuptial agreement, the sunset provision, provides in its entirety: 'This Agreement shall become null and void and of no

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further force and effect upon the seventh (7<sup>th</sup>) anniversary of the **parties' marriage.** The plaintiff argues that it was unreasonable for the court to have applied the sunset provision because the plaintiff had filed the dissolution action in March, 2007, several months prior to the parties' seventh wedding anniversary on July 14, 2007. The plaintiff suggests that if the sunset provision is read in the context of the entire agreement, it is clear that the parties intended that the agreement should expire only if the parties were still happily married and actually celebrating their seventh wedding anniversary, rather than in the midst of divorce proceedings. The defendant responds that the court properly construed the sunset provision, which sets forth in clear and unambiguous language that the prenuptial agreement would become null and void if the parties remained married on July 14, 2007. We agree with the **defendant.**"

### **DIGESTS:**

- [West's Connecticut Digest: Marriage and Cohabitation](#)  
II. Agreements Concerning Marriage  
§ 143. Agreements to Marry - Modification or rescission.  
§ 183. Premarital Agreements - Modification.  
§ 184. Premarital Agreements - Revocation or extinguishment.

### **WEST KEY NUMBERS:**

- *Marriage and Cohabitation*  
# 143. Agreements to Marry - Modification or rescission  
# 183. Premarital Agreements - Modification  
# 184. *Premarital Agreements* - Revocation or extinguishment

### **ENCYCLOPEDIAS:**

- 41 [Am. Jur. 2d Husband and Wife](#) (2017).  
§84. Enforceability of certain provisions  
§85. - Support, maintenance, or alimony upon divorce  
§106. Discharge, release, or alteration by parties, generally

### **TEXTS & TREATISES:**

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- 8A Arnold H. Rutkin et al., Connecticut Practice Series, [Family Law and Practice With Forms](#) (3d ed. 2010).  
Chapter 48. Premarital and Postnuptial Agreements  
§ 48:8. Particular clauses—Generally  
§ 48:16. Amendment or revocation of agreements
- 2 Alexander Lindey and Louis I. Parley, [Lindey And Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
Chapter 110. Antenuptial (Premarital) Agreements  
§ 110.72. Modification; Revocation
- 5 Arnold H. Rutkin, [Family Law and Practice](#) (2017).  
Chapter 59. Antenuptial Agreements  
§ 59.06. Rules of Enforcement, Modification or Avoidance
- John Tingley and Nicholas B. Svalina, [Marital Property Law](#), Rev. 2d. (2017-2018 Ed.).  
Chapter 26. Postnuptial and Separation Agreements  
§ 26.20. Modification of agreement

- 9C [Uniform Laws Annotated](#) 35 (2001)  
Uniform Premarital Agreement Act  
§ 5. Amendment, Revocation.

# Section 7: Federal Tax Aspect

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to the federal tax aspects of premarital agreements in Connecticut.

## **DEFINITIONS:**

- **Full and adequate consideration.** "In an antenuptial agreement the parties agree, through private contract, on an arrangement for the disposition of their property in the event of death or separation. Frequently, in exchange for the promises of property, one party agrees to relinquish his or her marital rights in other property. Occasionally, however, the relinquishment of marital rights is not involved. These contracts are generally enforceable under state contract law. . . . *Nonetheless, transfers pursuant to an antenuptial agreement are generally treated as gifts between parties, because under the gift tax law the exchange promises are not supported by full and adequate consideration, in money or money's worth.*" (emphasis added). Green v. Commissioner of Internal Revenue, T.C. Memo 1987-503.

## **STATUTES:**

You can visit your local law library or [search the most recent U.S. Code](#) on the U.S. Code website to confirm that you are accessing the most up-to-date laws.

- 26 U.S.C. (2017) Internal Revenue Code [§ 2043\(b\)](#). Transfers for insufficient consideration [§ 2053](#). Expenses, indebtedness, and taxes [§ 2056](#). Bequests, etc., to surviving spouse [§ 2511](#). Transfers in general

## **REGULATIONS:**

You can visit your local law library or [search the most recent C.F.R.](#) on the e-CFR website to confirm that you are accessing the most up-to-date regulations.

- [26 CFR 25.2512-8](#) (2017). Transfers for insufficient consideration

## **CASES:**

- [Estate of Herrmann v. Commissioner of Internal Revenue](#), 85 F.3d 1032, 1036 (2d Cir. 1996). " . . . the right that Harriet traded away in return for a life interest in her husband's apartment was not 'adequate and full consideration in money or money's worth' under [IRC] § 2053(c)(1)(A)."
- [Commissioner of Internal Revenue v. Wemyss](#), 324 U.S. 303, 304, 65 S. Ct. 652, 89 L.Ed. 958 (1945). "...On Mrs. More's unwillingness to suffer loss of her trust income through remarriage the parties...entered upon an agreement whereby taxpayer transferred to Mrs. More a block of shares

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**ENCYCLOPEDIAS:**

**TEXTS & TREATISES:**

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of stock. Within a month they were married. The Commissioner ruled that the transfer of stock...was subject to the Federal Gift Tax....”

- [Merrill v. Fahs](#), 324 U.S. 308, 309-10. 65 S.Ct. 655, 89 L.Ed. 963 (1945). “...taxpayer, the petitioner, made an antenuptial agreement with Kinta Desmare....By the arrangement entered into the day before their marriage, taxpayer agreed to set up within 90 days after marriage an irrevocable trust...to conform to Miss Desmare’s wishes...On their gift tax return...both reported the creation of the trust but claimed no tax was due. The Commissioner, however, determined a deficiency ...in taxpayer’s return in relation to the transfer...”
- West Key Number: Internal Revenue # 4159(7)
- Maurice T. Brunner, Annotation, *Construction And Application Of Statutes Apportioning Or Prorating Estate Taxes*, 71 [ALR3d](#) 247 (1976).  
§ 10[b]. Where spouse’s right rests on contract
- Maurice T. Brunner, Annotation, *Devise Or Bequest Pursuant To Testator’s Contractual Obligation As Subject To Estate, Succession, Or Inheritance Tax*, 59 [ALR3d](#) 969 (1974).  
§ 6. Antenuptial or postnuptial contracts
- 2 Alexander Lindey and Louis I. Parley, [Lindey and Parley on Separation Agreements and Antenuptial Contracts](#) (2d ed. 1999).  
Chapter 110  
§ 110.77 Taxes  
[1] Federal Gift Taxes  
[2] Federal Estate Taxes
- 12 Jacob Rabkin and Mark H. Johnson, [Current Legal Forms](#) (2011).  
Chapter 10. Domestic Relations  
§ 10.09. Premarital Agreements  
[1] Establishing **Spouse’s** Rights  
[2] Gifts Under Premarital Agreements  
[3] Estate Taxation
- Linda J. Ravdin, [Premarital Agreements](#) (2011).  
Chapter 13. Model Title Controls Agreement with Provisions for Weaker Party  
Taxes: Comment  
Taxes: Model text
- Gary N. Skoloff et al., [Drafting Prenuptial Agreements](#) (2016) [includes CD-ROM].  
Part XIV. Estate Planning Considerations for Premarital Agreements

# Section 8: State Tax Aspect

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to the state tax aspects of premarital agreements in Connecticut.

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017)
    - § [12-341](#). Taxable transfer for persons dying on and after July 1, 1959 and prior to July 1, 1963
    - § [12-341b](#). Taxable transfer for persons dying on and after July 1, 1963
- “The transfers enumerated in section 12-340 shall be **taxable if made:** ... (e) in payment of a claim against the estate of a deceased person arising from a contract made by him and payable by its terms at or after his death, but a claim created by an antenuptial agreement made payable by will shall be considered as creating a debt against the estate and shall not constitute a taxable transfer. If any transfer specified in subdivisions (c), (d) and (e) of this section is made for a valuable consideration, so much thereof as is the equivalent in money value of the money value of the consideration received by the transferor shall not be taxable, but the remaining portion shall be taxable. If it becomes necessary or appropriate in ascertaining such value to use mortality tables, the American Men's Ultimate Mortality tables at four per cent compound interest shall be used, so far as applicable.”

## **ENCYCLOPEDIAS:**

- Maurice T. Brunner, Annotation, *Devise Or Bequest Pursuant To Testator's Contractual Obligation As Subject To Estate, Succession, Or Inheritance Tax*, 59 [ALR3d](#) 969 (1974).
  - § 6. Antenuptial or postnuptial contracts

## **TEXTS & TREATISES:**

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- Gayle B. Wilhelm, [Connecticut Estate Practice: Death Taxes in Connecticut](#) (4th ed. 2017).
  - Chapter 6. The Succession Tax
    - § 6:3. Types of transfers affected
    - § 6:7. Transfers by antenuptial agreement or other contract

## Appendix: Legislative Histories in the Connecticut Courts

**Dornemann v. Dornemann**, 48 Conn. Sup. 502, 516-520, 850 A.2d 273 (2004).

There is useful legislative history for the act. When the joint judiciary committee of the General Assembly held public hearings on March 17, 1995, the committee took testimony from Edith F. McClure of the Family Law Committee of the Connecticut Bar Association. The Family Law Committee of the Bar Association drafted the act. The statement of purpose from the Family Law Committee of the Connecticut Bar Association began as follows: "The purpose of the proposed Act is to achieve by legislation a statement of public policy recognizing the efficacy of agreements for the management and control of property and personal rights and obligations of spouses. . . . The purpose of the Act is to provide certainty as to the enforceability of the provisions in premarital agreements. . . ." Conn. Joint Standing Committee Hearings, Judiciary, Pt. 7, 1995 Sess., p. 2492. "[T]estimony before legislative committees may be considered in determining the particular problem or issue that the legislature sought to address by the legislation. . . . This is because legislation is a purposive act . . . and, therefore, identifying the particular problem that the legislature sought to resolve helps to identify the purpose or purposes for which the legislature used the language in question." (Internal quotation marks omitted.) *Dowling v. Slotnik*, 244 Conn. 781, 804, 712 A.2d 396, cert. denied sub nom. *Slotnik v. Considine*, 525 U.S. 1017, 119 S.Ct. 542, 142 L.Ed.2d 451 (1998).

"In determining whether the use of the word 'shall' is mandatory or directory, the test is whether the prescribed mode of action is of the essence of the thing to be accomplished. . . . That test must be applied with reference to the purpose of the statute." (Internal quotation marks omitted.) *Sears, Roebuck & Co. v. Board of Tax Review*, 241 Conn. 749, 760, 699 A.2d 81 (1997). The signature of the party seeking enforcement of the terms of the contract is not a necessity. So long as he performs his obligations under the contract, his signature is superfluous from a practical point of view. In the present case, the defendant married the plaintiff. In so doing, he acted in reliance upon the plaintiff's signing of the premarital agreement. The certainty-of-enforceability purpose of the statute is achieved when the person who is disavowing the validity of the document has signed it intelligently and willingly. Having reaped the benefit of the signing, the plaintiff may not now disavow the burdens she assumed as her part of the contract. "One enjoying rights is estopped from repudiating dependent obligations which he has assumed; parties cannot accept benefits under a contract fairly made and at the same time question its validity." *Schwarzschild v. Martin*, 191 Conn. 316, 321, 464 A.2d 774 (1983).

A colloquy that took place on the floor of the House of Representatives on May 23, 1995, addressed issues relating to technical noncompliance with the act as opposed to substantive noncompliance. As the proponent of the act, Representative Ellen Scalettar of the 114th assembly district responded, through Deputy Speaker Wade A. Hyslop, Jr., to questions put by Representative Richard O. Belden of the 113th assembly district:

"[Representative Belden]: Mr. Speaker, just a question, through you to the proponent please. Mr. Speaker, with the enactment of this legislation, if somebody had signed some other agreement or it didn't comply with this statute, would it have the legal effect of a contract anyway? Through you, Mr. Speaker. . . .

"[Representative Scalettar]: Through you, Mr. Speaker. Yes, it would still be a valid contract. In fact, the bill specifically provides in Section 10 that it will not be deemed to affect the validity of any premarital agreement made prior to the effective date of the Act. . . .

"[Representative Belden]: Then, through you, Mr. Speaker, how about a separate agreement made after the effective date that did not entirely comply with the legislation before us? . . .

"[Representative Scalettar]: Through you, Mr. Speaker. I think the non-compliance would be subject to interpretation by the courts in that circumstance. The language is very broadly written. And I can't really foresee a circumstance where this bill, if enacted, would prevent enforcement of an agreement. . . .

"[Representative Belden]: Thank you, Mr. Speaker. What I'm attempting to get into the record here is whether this is a mandate that the only way you can have a premarital agreement in the state of Connecticut is by following this statute or whether or not two consenting adults following a standard contract type format could, in fact, enter into any type of agreement they care to and still be valid. And that's what I'm trying to get in the record, Mr. Speaker, through you to Representative Scalettar. If I perchance decided to, if for some reason, was single and decided to marry next year and entered into a contract that was different than the requirements of this file, would it be enforceable? Through you, Mr. Speaker. . . .

"[Representative Scalettar]: Through you, Mr. Speaker. It's very difficult to answer in the abstract. I believe that most agreements would be enforceable because I can't, as I said, I can't really foresee circumstances where the conditions would be in such noncompliance as to render the agreement invalid. But, for example, if the agreement adversely affected the rights of a child, which is in violation of the statute, I do not believe that would be enforceable. It would depend on the actual terms of the agreement." 38 H.R. Proc., Pt. 9, 1995 Sess., pp. 3212-14.

Representative Belden used the word "mandate" to question whether the intent of the act was to supplant common law premarital contracts or merely to steer the process into a standardized form. The discussion that took place on the floor of the House suggests that the legislature intended to do the latter. Shortly after the dialogue between Representatives Belden and Scalettar, the act passed the House with no dissenting vote.

The legislative history confirms that the purpose of the act is to recognize the legitimacy of premarital contracts in Connecticut, not to constrain such contracts to a rigid format so as to limit their applicability. The legislature's use of the word "shall" in § 46b-36c is directory rather than mandatory as to the signature of the party seeking to enforce the premarital agreement. A signature by the party seeking to enforce the contract is a matter of convenience rather than a matter of substance. It is the signature of the party seeking to invalidate the force of the contract that is of the essence in order to assure enforceability.