

# Is My Marital Agreement Enforceable?

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The voluntary settlement of disputes between parties is favored by New Jersey courts and therefore, courts will enforce agreements if the parties were fully informed and knowingly assumed the obligations set out in the agreement. The agreements must not be unconscionable or fraudulent, nor did one party or the other overreach during the negotiations of the agreement.

Our firm has litigated three important cases which affirmed the enforcement of marital settlement agreements. They are: *Quinn v. Quinn*, 2016 N.J. LEXIS 37 where the Supreme Court enforced the property settlement which provided that the ex-husband's obligation to pay alimony terminated upon the cohabitation of the ex-wife; *Bisbing v. Bisbing*, 2016 N.J. Super. LEXIS 50, where the Appellate Division affirmed the agreement but sent the matter back to the trial court to determine whether or not the ex-Wife negotiated in bad faith the term that she would be the custodial parent of the children on the condition that she would not relocate from the state; and, *Rogers v. Gordon*, 404 N.J. Super. 213 (App. Div. 2008), where the Appellate Division enforced a pre-nuptial agreement.

Courts have found all of these agreements to be enforceable because they had been entered into voluntarily, were fair and equitable, and because the parties were fully informed and had knowingly assumed the obligations set out in the agreements. Courts have consistently ruled to enforce agreements, thus affirming the public policy favoring settlement of disputes and refusing to rework agreements to give the parties a better deal than they negotiated themselves.

In *Quinn*, the disputed term was the definition of "cohabitation." The parties agreed that the indicia of cohabitation was defined as "more than just cohabiting together, but intertwined finances, joint bank accounts, sharing living expenses, sharing household chores and the recognition of the relationship in the couple's social and family circle." *Konzelman v. Konzelman*, 158 N.J. 185 (1999). After the ex-wife arguing that all of the behavior she and her significant other exhibited in this case was not cohabitation, she then argued that the agreement was unenforceable as a matter of public policy-both positions

were rejected by the Appellate and the Supreme Courts.

In *Bisbing*, during the parties' separation and prior to the finalization of any agreement, the Wife had begun a relationship with a man from Utah. Five months after she began this relationship, the parties agreed that the Wife could be the primary custodial parent of their twins on the condition that she not relocate with the children and that the parties would not live more than 20 miles away from one another. Nine months after the divorce, the ex-wife advised her ex-husband that she planned on marrying and moving to Utah with the children. The trial court permitted the move and within 48 hours, the wife and children had left New Jersey. The Appellate Division, however, held that the parties had an agreement which precluded her from moving with the children without a hearing on whether or not the ex-wife had negotiated the agreement in bad faith and whether or not this move was in the best interests of the children.

In *Rogers v. Gordon*, 404 N.J. Super. 213 (App. Div. 2008), the parties negotiated a pre-nuptial agreement before their marriage and then, seven years into their marriage, reaffirmed the agreement as part of future estate planning. During the long term marriage, the parties lived their financial lives consistent with the terms of the agreement, keeping their finances and most of their assets separate. The Husband argued that the agreement was not fair at the time he was seeking enforcement (the law at the time). The Appellate Division however, upheld the terms of the agreement.

The important lesson is that marital settlement agreements whether they be pre-nuptial agreements or agreements made in contemplation of divorce, will be enforced.