

# New Law Strengthens The Enforcement Of Premarital And Pre-Civil Union Agreements

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A new law which changes the enforcement of both [premarital and pre-civil union agreements](#) was passed by the New Jersey Legislature and signed by Governor Chris Christie in June, 2013.

A prominent distinction between the new law and the prior statute (the Uniform Premarital Agreement Act) is that the determination, by a court, of whether a premarital agreement is unconscionable will now be made as of the date of execution of the agreement, not when one party sought enforcement. What this means is that the court will determine whether or not the agreement was unconscionable as of the day the parties signed it, not when one of the parties filed an application with the court to enforce it (which could be years later).

The burden to set aside the agreement remains upon the spouse or civil union partner who alleges the agreement is unconscionable. The burden of proof (the standard of evidence is “clear and convincing”) is on the person challenging the agreement. That means the challenger must produce evidence that is so clear, direct and weighty to convince a judge to reach a clear conviction, without hesitancy, of the truth of the precise facts in issue.

An agreement will not be upheld if it was unconscionable at the time it was executed by the parties.

The party seeking to set it aside must prove that he/she

1. was not provided full and fair disclosure of the earnings, property and financial obligations of the other party;
2. did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided;
3. did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or
4. did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

This new law may be a deterrent to some attorneys drafting premarital agreements for non-moneyed future spouses. It could also deter some applications being filed in the future to set aside premarital or pre-civil union agreements because of the burden placed on the spouse or civil union partner seeking to have it declared unconscionable. Because of the new standards, those persons challenging these agreements will now have a more difficult burden to overcome in attempting to have an agreement set aside as unconscionable.

The new law applies only to premarital and pre-civil union agreements entered into on or after the effective date, or entered into before that effective date but voluntarily revised by the parties on or after the effective date in accordance with the procedures for amending agreements set forth in the law.

It remains to be seen if the law, in operation, could potentially leave a spouse or civil union partner a public charge, under certain circumstances, or should other legal principles be applied to prevent such an outcome. On the other hand, it recognizes the impracticality of trying to judge an agreement's validity based on circumstances many years after its execution.