

PRENUPTIAL AGREEMENTS

TEST FOR VALIDITY AND ENFORCEABILITY

Three conditions must be met [*Gross v. Gross*, 11 Ohio St.3d 99, 105, 464 N.E.2d 500 (1984).]:

1. Entered into freely without fraud, duress, coercion, or overreaching;
2. Full disclosure or full knowledge and understanding of the nature, value, and extent of the other parties' property; AND
3. The terms do not promote or encourage divorce or profiteering by divorce.

COUNSEL

- The party who would be financially disadvantaged by the enforcement of the agreement must have had a meaningful opportunity to consult with counsel. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]



Waiver of right to counsel specifically addressed.

INTERPRETATION

- Antenuptial agreements are contracts, so the law of contracts generally applies to their interpretation and application. However, certain special rules apply considering the fiduciary relationship between the parties. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]

BURDEN

1. Disproportionate Results
 - If a party receives disproportionately less than what he/she would receive from an equitable distribution, then the party claiming the agreement is valid has the "burden" that there was full disclosure or knowledge of the assets. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]

2. Fraud, Duress, Coercion or Overreaching

- The burden remains with the challenging party. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]

3. Time Constraints

- If the antenuptial agreement is presented a very short time before the wedding ceremony and the postponements of the same would cause a significant hardship, embarrassment, or emotional distress, then there arises a presumption of overreaching or coercion. [*Fletcher v. Fletcher*, 68 Ohio St.3d 464, 470, 628 N.E.2d 133 (1993).]

SPOUSAL SUPPORT PROVISIONS

- The Court held that the court may modify the provision(s) set forth in the antenuptial agreement if, at the time of divorce, such provisions are unconscionable. [*Gross v. Gross*, 11 Ohio St.3d 99, 109-110, 464 N.E.2d 500 (1984).]
 - The party claiming the unconscionability of the spousal support provision, by way of motion for modification, has the burden of showing its unconscionable effect at the time of divorce, and the court shall use the factors set forth in R.C. 3105.18 to determine the issue of unconscionability and the reasonableness of the spousal support provisions. [*Gross v. Gross*, 11 Ohio St.3d 99, 109-110, 464 N.E.2d 500 (1984).]



If the validity of agreement is raised and/or challenged, then bifurcate and set a hearing well in advance of the final hearing to determine the validity of the agreement.

Look for schedules attached to the agreement for assets and liabilities.