

CHAPTER 72

AN ACT concerning premarital and pre-civil union agreements and amending R.S.37:2-32 and R.S.37:2-38.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.37:2-32 is amended to read as follows:

Definitions.

37:2-32. As used in this article:

- a. "Premarital or pre-civil union agreement" means an agreement between prospective spouses or partners in a civil union couple made in contemplation of marriage or a civil union and to be effective upon marriage or upon the parties establishing a civil union;
- b. "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings;
- c. (Deleted by amendment, P.L.2013, c.72).

2. R.S.37:2-38 is amended to read as follows:

Enforcement of premarital or pre-civil union agreement; generally.

37:2-38. Enforcement of premarital or pre-civil union agreement; generally.

The burden of proof to set aside a premarital or pre-civil union agreement shall be upon the party alleging the agreement to be unenforceable. A premarital or pre-civil union agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

- a. The party executed the agreement involuntarily; or
- b. (Deleted by amendment, P.L.2013, c.72)
- c. The agreement was unconscionable when it was executed because that party, before execution of the agreement:
 - (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.
- d. The issue of unconscionability of a premarital or pre-civil union agreement shall be determined by the court as a matter of law. An agreement shall not be deemed unconscionable unless the circumstances set out in subsection c. of this section are applicable.

3. This act shall take effect immediately and shall apply to all 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 R.S.37:2-37.

Approved June 27, 2013.