

БРАЧНЫЙ ДОГОВОР В СИСТЕМЕ АМЕРИКАНСКОГО ПРАВА

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В статье рассматриваются понятие брачного договора в рамках законодательства США с точки зрения исторического развития и современной правоприменительной практики, основные положения этого документа, а также правовые последствия его заключения.

The law concerning ante-nuptial agreements in the USA is rather sophisticated and changing quickly as a consequence of social and cultural trends. Thus, nowadays in modern circles, “democracy” in the context of family laws means spouses’ autonomy – family matters should be self-determined in accordance with the will of matrimonial members. However, premarital agreements are discrepant as to their appropriateness and their enforceability; and, in addition, the accompanying controversy is not unique to the United States [1].

What is more, the underestimation of pre-nups is wide-spread among couples as they fail to realize how pre-nuptial agreements can help in case of divorce, even taking into account the USA statistically controlled study which shows that someone gets divorced every 10-13 seconds [2].

“Premarital agreement” means an agreement between individuals who intend to marry which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed before the individuals marry, of a premarital agreement [3].

In the beginning of the US legal history, courts did not enforce prenuptial agreements by the example of the UK. But since 1983 most courts and legislative bodies in the United State have been taking the general position that pre-

nuptial agreements are enforceable if they meet certain formal procedural requirements and are otherwise valid contracts under general contract principles [4] as regards to the Uniform Prenuptial Agreement Act 1983, which approximately 26 states have adopted but, each of these states has included its own modifications to the UPAA.

Notwithstanding remaining states didn't apply this instrument, there are several criteria which are legally binding concerning the nature of premarital agreements for the whole country:

- must be in writing;
- must meet certain technical requirements (for example witnessing signature of the pre-nup by 2 people);
- must be signed before the marriage (Timing of Execution);
- a marriage must occur;
- must meet standards for substantive fairness;
- must be financial disclosure [5].

Currently in USA, approximately 5% of marrying couples have signed pre-nuptial agreements and this is expected to reach 20% in the near future [6]. The general approach is that parties should be free, within broad limits, to choose the financial terms of their marriage though all the property of the spouses, however acquired, should be regarded as assets of the married couple, available for distribution among them, upon consideration of the various factors.

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A prenuptial agreement can protect the rights and obligations of both parties with respect to property and all costs associated with its maintenance. It's possible to outline disposition, right of ownership of property if the marriage ends upon separation, death, or the occurrence of another event. What is curious is that premarital agreement has several limitations subject to protection, usually about violating public policy or a criminal law including spouses' personal rights and obligations.

There are also essential terms of premarital agreement enforceability:

1. the contract must comply with the Statute of Frauds,
2. there must be consideration,
3. there must be ascertainment that there is no overreaching in the contract [7].

It means that a contract should be made in consideration of marriage or a promise to marry.

Otherwise a premarital agreement is not enforceable if the party against whom enforcement is sought proves that the latter did not execute the agreement voluntarily; or the agreement was unconscionable when it was executed and, before execution of the agreement [8].

Whereas, pre-nuptial contract is a mere of tool for expressing independent will of husband and wife precluding possible disastrous mismatches, investing each party with its autonomy and freedom. Marriage can be considered as a partnership where exists equal division of property and interest. So, prenuptial agreement is a very convenient legal discovery for people who don't want to complicate the process of their right protection.

PRENUPTIAL AGREEMENT UNDER US LAW

The article covers the key issues of a prenuptial agreement existing in US legal system, including, without limitation, its historic developments and current practices together with the core clauses and legal effect thereof.

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