

## What's Up with Prenupts?

By Amy J. Weis & Jamie E. Cardenas

### Answer:

There is not much new caselaw in the area of prenuptial agreements since the last time I presented a Hot Tip on this subject (See Often Overlooked Antenuptial Agreement Issues, AAML Kemp Symposium 2011), but there is the potential for new developments in this area that cause the need for us to pay even more attention to certain provisions in drafting Prenuptial Agreements. I also offer some tips on preparing to litigate a Prenuptial Agreement.

**What is a Prenuptial Agreement?** A prenuptial agreement determines the distribution of assets and is entered into so that the assets owned by each party remain theirs when the marriage terminates. Fletcher v. Fletcher, 68 Ohio St.3d 464, 466 (1994). It may also address spousal support.

### Standard for Enforceability as to Property Division:

A prenuptial agreement must meet a minimum standard of good faith and fair dealing to be enforceable. A prenuptial agreement that is entered into **freely and voluntarily** will not be invalid because it makes a disproportionate distribution. Fletcher, supra at 466 (*citing* Juhasz v. Juhasz, 134 Ohio St. 257 (1938), paragraph one of the syllabus).

Determining whether a prenuptial agreement was entered into voluntarily is measured by three primary factors: (1) whether there was full disclosure or full knowledge of the nature, value, and extent of the prospective spouse's assets; (2) whether it was entered into without fraud, duress, coercion or overreaching; and (3) whether it promotes divorce or profiteering by divorce. Fletcher, *supra* at 467; *see also* Gross v. Gross, 11 Ohio St.3d 99 (1984), paragraph two of the syllabus. Further, when a prenuptial agreement provides disproportionately less than the party challenging it would have received under an equitable distribution, the party financially disadvantaged must have a meaningful opportunity to consult with independent counsel. Fletcher, paragraph 2 of syllabus.

Where a prenuptial agreement is found to be enforceable, the definitions provided for separate and marital property will control over the definitions provided under R.C. 3105.171. Burdick v. Burdick, 11th Dist. Ashtabula No. 2013-A-0030, 2014-Ohio-2876, ¶ 14. As an important note, Ohio Appellate Courts, in considering whether increases in separate property subject to prenuptial agreements constitute separate or marital property, have generally concluded that “to prevent nonpassive increases in separate property from being denominated “marital” property, an antenuptial agreement should contain more specific terms referring to the future of that property.” Hyslop v. Hyslop, 6th Dist. Wood No. WD-01-059, 2002-Ohio-4656, ¶ 20; *see also* Burdick v. Burdick, 11th Dist. Ashtabula No. 2013-A-0030, 2014-Ohio-2876, ¶ 55; Wolf-Sabatino v. Sabatino, 10th Dist. Franklin No. 10AP-1161, 2011-Ohio-6819, ¶ 22.

**Disclosure:**

The party claiming the validity of a prenuptial agreement bears the burden to show that there was full disclosure or full knowledge of the assets. Hook v. Hook, 69 Ohio St.2d 234, 235,

431 N.E.2d 667, 669 (1982); see also Constance v. Constance, 5th Dist. Morrow No. 14CA0009, 2015-Ohio-3244, ¶ 33 (quoting disclosure Vanderbilt v. Vanderbilt, 9th Dist. Medina No. 11CA0103-M, 2013-Ohio-1222, ¶ 7). Whether there is full disclosure or knowledge is based on the totality of the circumstances at the time the prenuptial agreement was executed. Juhasz v. Juhasz, 134 Ohio St. 257, 16 N.E.2d 328 (1938), paragraph three of the syllabus. Factors such as the amount of time the spouses spent together, and how much each was familiar with the other’s family relationships, employment, and financial dealings can adequately determine whether there was adequate disclosure. Stewart v. Harney, Warren App. No. 87-80-060, 1988 WL 28151 (Ohio Ct. App. 12<sup>th</sup> Dist., Warren Cty., March 7, 1988) (unreported).

The full disclosure requirement set forth in both *Fletcher* and *Gross* is satisfied if the spouse challenging a prenuptial agreement has a general knowledge of the nature and extent of the other’s wealth and assets. Millstein v. Millstein, Cuyahoga App. Nos. 79617, 79754, 80184, 80185, 80186, 80187, 80188, 80963, 2002-Ohio-4783, 2002 WL 31031676 at \*10 (Ohio Ct. App. 8<sup>th</sup> Dist., Cuyahoga Cty., September 12, 2002) (unreported); see also Burdick, *supra* at ¶ 22. However, a court may decline to enforce a prenuptial agreement where no list of disclosed property is provided. See e.g. Barton v. Barton, 2nd Dist. No. 2016-CA-12, 2017-Ohio-980, 86 N.E.3d 937, ¶ 6.

**Fraud, Duress, Coercion & Overreaching:**

Once the initial burden of proper disclosure is met by the party claiming the validity of the agreement, the burden then shifts to the party attacking the prenuptial agreement to show that the agreement was entered into fraudulently, under duress or coercion, or is overreaching. Fletcher, *supra* at 467 (citing Gross, *supra* at paragraph two of the syllabus.) “Overreaching” is defined as

one party outwitting or cheating the other “by artifice or cunning, or by exploiting a significant disparity in understanding the nature of the transaction.” *Id.* A claim of fraud, duress, coercion and/or overreaching cannot be proven by the party challenging a prenuptial agreement when the challenging party has both competent legal representation and ample opportunity to seek the advice of counsel prior to signing the agreement. *See Millstein, supra* at \*7-8.

An opposing party’s active role in shaping the terms of an agreement – by negotiating for substantive changes in the proponent’s draft agreement, for example – demonstrates voluntariness and negates a claim of duress, undue influence or lack of voluntariness, even where the proponent does not accept every change so proposed. Although no Ohio court has ruled expressly on this facet of voluntary participation in prenuptial agreements, other jurisdictions have done so, and have held that an opposing party’s participation in the process negates any claim of involuntariness. *See, e.g., Francavilla v. Francavilla*, 969 So.2d 522 (Fla. App. 2007); *Winchester v. McCue*, 882 A.2d 143 (Conn.App.2005); *In re Marriage of Murphy*, 834 N.E.2d 56 (Ill.App. 2005); *Reed v. Reed*, 693 N.W.2d 825 (Mich.App. 2005).

### **Standard for Enforceability as to Spousal Support:**

An prenuptial agreement that addresses spousal support, unlike property division, “must meet the additional test of conscionability at the time of the divorce or separation.” *Gross*, paragraph four of the syllabus. The *Gross* court explained:

“We believe that the underlying state interest in the welfare of the divorced spouse, when measured against the rights of the parties to freely contract, weighs in favor of the court’s jurisdiction to review, at the time of the subsequent divorce, the terms in an antenuptial agreement providing sustenance alimony for one of the parties. There is strong public policy rationale for not strictly enforcing such a provision which, even though entered in good faith and reasonable

at the time of execution, may have become unreasonable or unconscionable as to its application to the spouse upon divorce. It is a valid interest of the state to mitigate potential harm, hardship, or disadvantage to a spouse which would be occasioned by the break-up of the marriage, and a strict literal interpretation of the provisions for maintenance of the spouse to be found in these agreements.” Gross, 464 N.E.2d 500.

For these reasons, in Northern Ohio, a trial court may also award temporary support during the pendency of a divorce action pursuant to R.C. 3105.18 despite the existence of a prenuptial agreement to the contrary. Cangemi v. Cangemi, Cuyahoga App. No. 86670, 2006–Ohio–2879; Mulvey v. Mulvey (Dec. 4, 1996), 9th Dist. No. 17707 (*citing* Fields v. Fields (Apr. 8, 1992), 9th Dist. No. 15235). Meanwhile, in Southern Ohio, a valid prenuptial agreement waiving spousal support (explicitly or implicitly) is an absolute bar to an award of temporary support. Kleinman v. Kleinman (Oct. 11, 2013), 2<sup>nd</sup> Dist. No. 25435. Further, in Northern Ohio, “[f]ailure to mention spousal support in an agreement dealing with preservation of separate property is not an agreement that spousal support shall never be awarded as permitted by statute.” Beverly v. Parilla, 7th Dist. No. 04 CO 55, 165 Ohio App.3d 802, 2006-Ohio-1286, 848 N.E.2d 881, ¶ 56.

A trial court commits reversible error by invalidating spousal support terms of a prenuptial agreement without first conducting the conscionability analysis set forth in *Gross*. See Vanderbilt v. Vanderbilt (March 27, 2013) 9<sup>th</sup> Dist. Nos 11CA0103-M, 11CA0104-M. *Vanderbilt II* explores the application of the unconscionability test, guided by the ORC 3105.18 factors, to the underlying facts of this case. See Vanderbilt v. Vanderbilt (Aug. 25, 2014) 9<sup>th</sup> Dist. No. 13CA0084-M. Ironically, in *Vanderbilt II*, the court reversed the trial court’s unconscionability finding.

### **Consider Contract Defenses to Enforceability:**

A prenuptial agreement is a contract. Fletcher, *supra* at 466 (*citing Juhasz v. Juhasz*, 134 Ohio St. 257 (1938), paragraph one of the syllabus.). It is subject to many of the same rules of law that govern contracts between other types of parties. For instance, the document may be rescinded according to the contract law doctrine of rescission. See e.g. Gartrell v. Gartrell, 5th Dist. No. 2007-AP-0071, 181 Ohio App.3d 311, 2009-Ohio-1042, 908 N.E.2d 1019 (holding Husband's negligence in failing to read prenuptial agreement before he signed it rose above ordinary negligence, and thus husband's unilateral mistake as to the terms of the agreement could not support rescission of the agreement; husband was an attorney who had practiced law for approximately 20 years, husband's lawyer faxed him a rough draft of the agreement, which he reviewed and faxed back with changes, and husband then signed the agreement without further review).

Prenuptial agreements must also “meet certain minimum standards of good faith and fair dealing.” Golan-Elliott v. Elliott, 3rd Dist. Union No. 14-17-01, 2017-Ohio-8524, ¶ 12 (quoting Rowland v. Rowland, 74 Ohio App.3d 415, 419, 599 N.E.2d 315, 318 (4th Dist.1991)). Where parties demonstrate their intent not to comply with the terms of the agreement, the court may find the agreement to be “inapplicable”. Golan-Elliott v. Elliott, 3rd Dist. Union No. 14-17-01 at , ¶ 10 (finding that the parties did not act in good faith in regards to their prenuptial agreement when neither party provided the prenuptial agreement in their Complaint or Answer, nor did either party file any motion to have the agreement enforced or challenged). The Court effectively applied the contract doctrine of mutual rescission in refusing to apply the prenuptial agreement in this case.

## **How Should the Prenuptial Agreement be Construed?**

“Prenuptial agreements are contracts, and the law of contracts generally applies to their application and interpretation.” Zaccardelli v. Zaccardelli, 9th Dist. Summit No. 26262, 2013-Ohio-1878, ¶ 9 (citing Fletcher v. Fletcher, 68 Ohio St.3d 464, 466, 628 N.E.2d 1343 (1994)). “When a court considers the division of property pursuant to an enforceable prenuptial agreement, ‘a court should not substitute its judgment and amend the contract.’” Id. (quoting Gross v. Gross, 11 Ohio St.3d 99, 108–09, 464 N.E.2d 500 (1984)).

In construing any contract, the primary objective is to ascertain the parties' intent. Aultman Hosp. Assn. v. Hosp. Care Corp. (1989), 46 Ohio St.3d 51, 53, 544 N.E.2d 920. You must first determine whether the disputed language of the contract is plain and unambiguous. “The language is unambiguous if, from reading only the four corners of the instrument, the language is clear, definite, and subject to only one interpretation.” Beverly v. Parilla, 7th Dist. No. 04 CO 55, 165 Ohio App.3d 802, 2006-Ohio-1286, 848 N.E.2d 881, ¶ 24. “The language is ambiguous if it is unclear, indefinite, and reasonably subject to dual interpretations or is of such doubtful meaning that reasonable minds could disagree as to its meaning.” Id.

“When the language of the contract is clear and unambiguous, the interpretation of the instrument is a matter of law, and the court must determine the intent of the parties through only the language included in the contract.” Id., citing Davis v. Loopco Indus., Inc. (1993), 66 Ohio St.3d 64, 66, 609 N.E.2d 144. The court may not resort to parol evidence to explain the meaning of the terms. Id., citing TRINOVA Corp. v. Pilkington Bros., P.L.C. (1994), 70 Ohio St.3d 271, 275. “When the language is ambiguous, there arises a factual question, and the court may consider extrinsic or parol evidence to ascertain the intent behind the language.” Id. (citing Davis, 66 Ohio St.3d at 66, 609 N.E.2d 144).

When a court's judgement does "not contradict the terms of the prenuptial agreement," it may not be considered to be precluded by the agreement. Zaccardelli, *supra* at ¶ 11 (citing Mulvey v. Mulvey, 9th Dist. No. 17707, 1996 WL 724759, \*2 (Dec. 4, 1996)). In Zaccardelli, the parties' premarital agreement provided that Husband would retain the residence he purchased prior to the marriage, and his interest in his family's business as his separate property. Id. at ¶ 2. The trial court determined that the retained earnings of the family business, which accumulated during the marriage, and the residence were subject to division between the parties at divorce. Id. at ¶ 4. Ohio's Ninth District Court of Appeals upheld this decision and stated that these findings did not violate the parties' premarital agreement. Id. at ¶ 6.

Specifically, as it relates to the retained earnings, the court noted that the prenuptial agreement specifically referred to Husband's *interest* in the business, not earnings. Id. at ¶ 11. As for the residence, the agreement provided that it could be modified by a written agreement of the parties. Id. at ¶ 16. In the years prior to their divorce, the parties had executed a deed transferring title to the residence to both the parties in a joint survivorship. Id. at ¶ 15. Since the form of modification was not specified in the prenuptial agreement, the court found the new deed to be a valid written modification as it was in writing, signed by both parties, and pertained to the ownership of the residence. Id. at ¶ 16.

Where a prenuptial agreement includes a waiver of the right to assert claims in the other spouse's property, the court is required to construe only the agreement and enforce the rights and duties created therein. Langer v. Langer (1997) 123 Ohio App.3d 348 (2<sup>nd</sup> Dist.) The existence of these provisions renders a "de facto martial termination" date inapplicable to the division marital property. Id. By way of illustration, in Langer, Ohio's Second District Court of Appeals determined that "Wife's right to receive lump sum payment upon dissolution of marriage, as

provided in antenuptial agreement, accrued on date of termination of marriage de jure, rather than on date marriage was allegedly de facto terminated by removal of husband from marital home following his assault on wife.” Id.

For further illustration on how courts interpret the intention of parties when interpreting a prenuptial agreement, see Vanderink v. Vanderink, 5th Dist. Licking No. 17 CA 0091, 2018-Ohio-3328, ¶ 17-32 wherein the Fifth District reviewed, *de novo*, the intentions of the parties when entering their agreement as it relates to the categorizations of separate and marital property.

### **Living under Prenuptial Agreements:**

Parties often put their prenuptial agreements away and never review them again, at least until a death or divorce occurs. This can be dangerous and have unintended consequences. For example, “[a]n antenuptial agreement waiving a spouse's interest in an individual retirement account controls over the beneficiary designation clause of an individual retirement account contract entered into prior to the antenuptial agreement.” Kunkle vs Kunkle (1998) 99 N.E.2d 41 (Ohio), paragraph 1 of syllabus.

### **Ethical Considerations:**

In a particular disciplinary case, the Ohio Supreme Court found that an “[a]ttorney who exploited peculiar ex parte motions practice of particular domestic relations court to obtain ex parte leave to file amended complaint and, thereby surreptitiously added to his client's pleadings an untimely denial of the validity of a prenuptial agreement violated Rule of Professional Conduct that required attorney in an ex parte proceeding to inform the tribunal of all material facts known to the lawyer that would enable the tribunal to make an informed decision, whether or not the facts were adverse; belatedly sneaking a defense into pleadings without the knowledge or permission of

the court was a failure to inform the tribunal of all material facts known to the lawyer. Rules of Prof.Conduct, Rule 3.3(d). Disciplinary Counsel v. Stafford, 131 Ohio St.3d 385, 2012-Ohio-909, 965 N.E.2d 971, ¶ 28 (2012), reinstatement granted, 135 Ohio St.3d 1290, 2013-Ohio-1199, 986 N.E.2d 1010, ¶ 28 (2013).

### **Forum Selection:**

When a prenuptial agreement provides for the application of another state's law, the substantive law of that state governs the agreement. This controls both the validity and the interpretation of the agreement. When Ohio is the venue of the action, Ohio's choice-of-law applies. *See Ohayon v. Safeco Ins. Co. of Illinois*, 91 Ohio St.3d 474, 476-77, 2001-Ohio-100. The Ohio Supreme Court in *Ohayon* outlines different choice-of-law rules which apply to various claims, including contact claims. *Id.* at 477. As previously discussed, a prenuptial agreement is a contract. One of the choice-of-law rules in contract cases is that courts abide by contractual choice-of-law provisions:

The law of the state chosen by the parties to govern their contractual rights and duties will be applied unless either the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or application of the law of the chosen state would be contrary to the fundamental policy of a state having a greater material interest in the issue than the chosen state and such state would be the state of the applicable law in the absence of a choice by the parties. Schulke Radio Productions, Ltd. v. Midwestern Broadcasting Co., 6 Ohio St.3d 436, syllabus (1983).

This rule applies to claims challenging the validity of a prenuptial agreement. *In re Estate of Davis*, 11th Dist. No. 98-A-0085, 99-LW-6100 (Dec. 3, 1999). As such, if a valid agreement provides that the law of another state shall govern the agreement, the substantive law of that state should be applied.

### **Formation/Litigation Tips:**

Consider researching the status of the law before you begin drafting or litigating a prenuptial agreement. When uncertain, ask for help. Experienced business counsel or estate-planning counsel can be very helpful, as can more experienced domestic counsel if some aspect of the case is outside your comfort zone. If you are litigating a prenuptial agreement with another State's or Country's choice of law provision hire competent and experienced counsel from that jurisdiction to co-counsel your case.

The future of the prenuptial agreement you may draft is unknowable in some respects. It is impossible to know whether the marriage will end in death or divorce. It is always good practice to retain prior drafts of the prenuptial agreement, as well as correspondence between the lawyers and parties, as part of the file. You should retain a final executed copy of the document too. Depending upon the circumstances leading up to the execution of the agreement, you may consider videotaping the signing conference. Whenever possible, all parties and counsel should sign the document together. When a joint signing conference cannot occur, you should always check the final documents for strikeouts or revisions, preferably before the day of the parties' marriage.

When litigating a prenuptial agreement, the first source of information is your client. Depending upon their focus as the time the document was executed, they may very well be the worst source of information—remembering little about the timing or the circumstances related to the formation and execution of the document. After the client interview, you should immediately consult the attorney who represented your client in the prenuptial matter. Given the passage of time, this person may or may not be helpful. Tracking down that attorney's file is therefore, of the utmost importance. This information can provide a wealth of good and bad facts for your client's

case. Following a review of the file, second interviews for the client and the attorney coupled with interviews of staff of the attorney, family members of your client, and other witnesses should be completed as soon as possible.

## **PLEADING PRENUPTIAL AGREEMENTS**

### **Complaint Provisions:**

6. Plaintiff further states that prior to the marriage the parties entered into a prenuptial agreement, a copy of which is attached hereto as Exhibit "A".

7. Plaintiff further states that the prenuptial agreement identified in Paragraph #6 above was entered into without fraud, duress, coercion, or overreaching.

8. Plaintiff states that prior to entering into the prenuptial agreement identified in Paragraph #6 above, there was a full disclosure and full knowledge of the nature, value and extent of the Plaintiff's property to Defendant.

9. Plaintiff states that the terms of the prenuptial agreement identified in Paragraph #6 above do not promote divorce or profiteering thereby.

10. Plaintiff further states that prior to entering into the prenuptial agreement identified in Paragraph #6 above, Plaintiff had a meaningful opportunity to consult with counsel prior to entering into the prenuptial agreement.

11. Plaintiff further states that the prenuptial agreement identified above in Paragraph #6 is valid, binding and enforceable.

### **Answer/Affirmative Defenses:**

#### **FIRST AFFIRMATIVE DEFENSE:**

Defendant's Counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

Defendant's Counterclaim is barred by the doctrine of estoppel, laches, rescission, abandonment and/or waiver.

THIRD AFFIRMATIVE DEFENSE:

The purported Prenuptial Agreement is invalid due to Defendant's failure to adequately and sufficiently disclose her assets, liabilities and income therein.

FOURTH AFFIRMATIVE DEFENSE:

The purported Prenuptial Agreement is invalid as Plaintiff did not have independent counsel to explain its nature and effect, and signed same in reliance on the representations made by Defendant and the attorney of Defendant, without fully understanding its purpose and the unconscionable provisions therein, affecting Plaintiff, and thereby Defendant should be estopped from asserting the validity of the purported agreement.

FIFTH AFFIRMATIVE DEFENSE:

The purported Prenuptial Agreement is invalid due to the vagueness of its language.

SIXTH AFFIRMATIVE DEFENSE:

The purported Prenuptial Agreement is invalid as it and/or its terms have been cancelled, rescinded, abandoned and/or waived as a result of the fraudulent actions of the Defendant during the marriage, such that Defendant should be estopped from asserting the validity of the purported agreement.

SEVENTH AFFIRMATIVE DEFENSE:

Defendant reserves the right to assert any additional affirmative defenses as discovery takes place.

**Motion for Determination of Validity:**

**PLAINTIFF, PAUL PRENUPTIAL'S MOTION FOR DETERMINATION OF  
VALIDITY OF PRENUPTIAL AGREEMENT**

Now comes the Plaintiff, Paul Prenuptial, and moves this Court for an order determining the validity of a prenuptial agreement for the reasons set forth in the memorandum below and incorporated herein by reference.

Respectfully Submitted,

BY: \_\_\_\_\_

### **MEMORANDUM IN SUPPORT**

Plaintiff pled the validity of the parties' Prenuptial Agreement in his Complaint for Divorce, filed August 15, 2008. Defendant denied the validity of the Prenuptial Agreement in her Answer to the Complaint for Divorce filed September 2, 2008. Plaintiff requests that this Court determine the validity of the Prenuptial Agreement. Determining the validity of the Prenuptial Agreement prior to the final hearing in this matter will serve the goal of judicial economy and reduce the parties' litigation costs. For these reasons, Plaintiff respectfully requests that this Court grant his Motion for Determination of Validity of the Prenuptial Agreement.

Respectfully Submitted,

BY: \_\_\_\_\_

#### **Favorite Provisions:**

##### Operative Event

**1.** Either party may elect to terminate the marriage during its term and such election shall take place with the occurrence of an Operative Event. The term "Operative Event" shall mean the earliest to occur of the following:

- A. Commencement of an action or proceeding by either Party seeking divorce, dissolution of marriage, legal separation, or other lifetime termination of the marriage, for any reason whatsoever; or
- B. One party delivers to the other a written notice electing to implement the terms of this Agreement for the purpose of terminating the marriage. Delivery of such notice shall be by physical delivery by one party to the other, mailing the notice, by registered or certified mail, return receipt requested, or by ordinary mail, to the other Party.

### Material Omissions

Paul and Donna have made a good faith effort to completely and accurately disclose their premarital assets and liabilities on the attached Exhibits A and B. Donna acknowledges that she has been given the opportunity to have the accuracy of Paul's Exhibit A confirmed by independent analysis. In the event that it is later determined that either or both exhibits contain any material or immaterial errors and/or omissions, such errors or omissions shall not invalidate this agreement unless it is determined that such errors and/or omissions are of a material nature and that such errors and/or omissions occurred as a result of the intentional act of the responsible party.

### Separate and Sole Property/Debt

1. Except as may be specifically and expressly set forth below, each party hereto shall own and retain, in his or her own right during the marriage, all of the property he or she owned prior to the marriage, which shall include but not be limited to, all income, appreciation, accretions, interests or other benefits accruing upon his or her pre-marital property during the marriage, whether such income, appreciation, accretion, interest or other benefit is acquired passively or is due to the labor, monetary, or in-kind contribution of either spouse or both spouses during the marriage, and all gifts, devises or inheritances made to him or her individually (hereinafter referred to as "Separate Property"). The Separate Property owned by each individual party prior to the marriage includes all of the property described in Exhibits A and B hereof, which exhibits are herein incorporated by reference with the same full force and effect as though fully set forth herein.

2. Except as may be specifically and expressly set forth below, each party hereto shall own and retain, in his or her own right during the marriage, all of the property and/or income he or she acquires in the sole and/or individual name of himself or herself during the course of the marriage, irrespective whether such property and/or income are due to the labor, monetary, or in-kind contribution of either spouse or both spouses during the marriage; as well as the income, appreciation, accretions interests or other benefits accruing to this property (hereinafter referred to as "Sole Property") during the marriage, whether such income, appreciation, accretions, interests, or other benefits are acquired passively or are due to the labor, whether such property and/or income are due to the labor, monetary, or in-kind contribution of either spouse or both spouses during the marriage.

3. In addition to their Separate and Sole Property, each party may have acquired or acquire Separate and/or Sole Debt and may acquire Joint Debt. "Separate Debt" shall be defined

as any and all debt individually contracted for by one of the parties prior to the marriage and disclose on the attached Exhibits A and B. "Sole Debt shall be defined as any and all debt in the individual name of one of the parties acquired during the marriage. "Joint Debt" shall be defined as any and all debt in the joint names of the parties acquired during the marriage.

Private Law/Langer Provision

In the event the marriage of the parties should terminate while both parties are living as a result of a divorce, legal separation, dissolution, annulment or other legal proceeding, each party shall retain, free and clear of any claim of the other party, his or her Separate and/or Sole Property, as defined above. In entering this **AGREEMENT**, the parties specifically recognize the presumptions and definitions contained in Ohio Revised Code Section 3105.171 and freely, knowingly and voluntarily seek to create a prenuptial agreement which supersedes the presumptions and definitions contained therein.

Choice of Law

The parties currently reside in Franklin County, Ohio. This **AGREEMENT** shall be interpreted in accordance with the laws of the State of Ohio and where case law on a particular matter of law might differ between judicial districts, this **AGREEMENT** shall be interpreted in accordance with the case law for the 10<sup>th</sup> District Court of Appeals (Franklin County). This provision shall apply despite any future relocation of the parties outside Franklin County, Ohio. Should the parties relocate to any jurisdiction where there is the option to have a marital termination determined by jury or bench trial, the parties herein waive any rights to trial by jury.