



Province of Alberta

MATRIMONIAL PROPERTY ACT

Revised Statutes of Alberta 2000
Chapter M-8

Current as of November 1, 2010

Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2010 cW-12.2 s117 amends s1, adds s1.1, repeals and substitutes s4, amends s5, adds s5.1, amends s6, adds s6.1, amends s7, adds s7.1, amends ss8 and 9, repeals s11, repeals and substitutes s12, amends s13, repeals and substitutes s14, amends s15, repeals and substitutes ss16 and 18, amends ss32, 33(1), 37 and 38.

Regulations

The following is a list of the regulations made under the *Matrimonial Property Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	<i>Amendments</i>
Matrimonial Property Act		
Matrimonial Property	13/99	63/2003, 177/2010, 227/2011, 145/2018

MATRIMONIAL PROPERTY ACT

Chapter M-8

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “Court” means the Court of Queen’s Bench;
- (b) “household goods” means personal property
 - (i) that is owned by one or both spouses, and
 - (ii) that was ordinarily used or enjoyed by one or both spouses or one or more of the children residing in the matrimonial home, for transportation, household, educational, recreational, social or esthetic purposes;
- (c) “matrimonial home” means property
 - (i) that is owned or leased by one or both spouses,
 - (ii) that is or has been occupied by the spouses as their family home, and
 - (iii) that is
 - (A) a house, or part of a house, that is a self-contained dwelling unit,

- (B) part of business premises used as living accommodation,
 - (C) a mobile home,
 - (D) a residential unit as defined in the *Condominium Property Act*, or
 - (E) a suite;
- (d) “matrimonial property order” means a distribution by the Court under section 7 and an order under section 9;
- (e) “spouse” includes a former spouse and a party to a marriage notwithstanding that the marriage is void or voidable.

RSA 1980 cM-9 s1

Knowledge of void marriage

2 Nothing in this Act confers a right on a spouse who at the time of marriage knew or had reason to believe that the marriage was void.

RSA 1980 cM-9 s2

Part 1 Matrimonial Property

Application by spouse

3(1) A spouse may apply to the Court for a matrimonial property order only if

- (a) the habitual residence of both spouses is in Alberta, whether or not the spouses are living together,
- (b) the last joint habitual residence of the spouses was in Alberta, or
- (c) the spouses have not established a joint habitual residence since the time of marriage but the habitual residence of each of them at the time of marriage was in Alberta.

(2) Notwithstanding subsection (1), if a statement of claim for divorce is issued under the *Divorce Act* (Canada) in Alberta, the plaintiff or the defendant may apply for a matrimonial property order.

RSA 1980 cM-9 s3

Form of application

4 An application for a matrimonial property order shall be made by statement of claim.

RSA 1980 cM-9 s4

Conditions precedent to application

5(1) A matrimonial property order may only be made

(a) if

(i) a judgment of divorce has been granted, or

(ii) a declaration of nullity of marriage has been made
with respect to the marriage,

(b) if one of the spouses has been granted a judgment of
judicial separation,

(b.1) if one or both of the spouses have obtained a declaration
of irreconcilability under the *Family Law Act*,

(c) if the Court is satisfied that the spouses have been living
separate and apart for a continuous period of at least one
year immediately prior to the commencement of the
application,

(d) if the Court is satisfied that the spouses are living separate
and apart at the time the application is commenced and
the defendant spouse

(i) has transferred or intends to transfer substantial
property to a third party who is not a bona fide
purchaser for value, or

(ii) has made or intends to make a substantial gift of
property to a third party,

with the intention of defeating a claim to property a
spouse may have under this Part, or

(e) if the Court is satisfied that the spouses are living separate
and apart and one spouse is dissipating property to the
detriment of the other spouse.

(2) Notwithstanding that a matrimonial property order has been
made under circumstances to which subsection (1)(b),(c),(d) or (e)
applies, the Court may make a further matrimonial property order
under circumstances to which subsection (1)(a) applies with respect
to the property of the same spouses if there has been a subsequent
resumption of cohabitation by the spouses during a period of more
than 90 days with reconciliation as its primary purpose.

(3) Spouses may be held to be living separate and apart
notwithstanding that they have continued to reside in the same

residence or that either spouse has rendered some household service to the other during the period of separation.

(4) For the purposes of subsection (1)(c), the period during which spouses have been living separate and apart shall not be considered to have been interrupted by reason only that there has been a resumption of cohabitation by the spouses during a single period of not more than 90 days with reconciliation as its primary purpose, and that period shall not be included in computing the period during which the spouses are living separate and apart.

RSA 2000 cM-8 s5;2003 cF-4.5 s121

Time for application

6(1) An application for a matrimonial property order to which section 5(1)(a) or (b) applies

- (a) may, notwithstanding subsection (2), be commenced at or after the date proceedings are commenced for a decree of divorce, a declaration of nullity, a judgment of judicial separation or a declaration of irreconcilability under the *Family Law Act*, but
- (b) may be commenced not later than 2 years after the date of the decree nisi, declaration or judgment.

(2) An application for a matrimonial property order to which section 5(1)(c) or (e) applies may be commenced within 2 years after the date the spouses separated.

(3) An application for a matrimonial property order to which section 5(1)(d) applies may be commenced within

- (a) two years after the date the spouses separated, or
- (b) one year after the date the property is transferred or given,

whichever occurs first.

(4) Any single period of not more than 90 days during which the spouses resumed cohabitation with reconciliation as its primary purpose shall not be included in computing the 2-year period under subsection (2) or (3).

RSA 2000 cM-8 s6;2003 cF-4.5 s121

Distribution of property

7(1) The Court may, in accordance with this section, make a distribution between the spouses of all the property owned by both spouses and by each of them.

(2) If the property is

- (a) property acquired by a spouse by gift from a third party,
- (b) property acquired by a spouse by inheritance,
- (c) property acquired by a spouse before the marriage,
- (d) an award or settlement for damages in tort in favour of a spouse, unless the award or settlement is compensation for a loss to both spouses, or
- (e) the proceeds of an insurance policy that is not insurance in respect of property, unless the proceeds are compensation for a loss to both spouses,

the market value of that property at the time of marriage or on the date on which the property was acquired by the spouse, whichever is later, is exempted from a distribution under this section.

(3) The Court shall, after taking the matters in section 8 into consideration, distribute the following in a manner that it considers just and equitable:

- (a) the difference between the exempted value of property described in subsection (2), referred to in this subsection as the “original property”, and the market value at the time of the trial of the original property or property acquired
 - (i) as a result of an exchange for the original property, or
 - (ii) from the proceeds, whether direct or indirect, of a disposition of the original property;
- (b) property acquired by a spouse with income received during the marriage from the original property or property acquired in a manner described in clause (a)(i) or (ii);
- (c) property acquired by a spouse after a decree nisi of divorce, a declaration of nullity of marriage, a judgment of judicial separation or a declaration of irreconcilability under the *Family Law Act* is made in respect of the spouses;
- (d) property acquired by a spouse by gift from the other spouse.

(4) If the property being distributed is property acquired by a spouse during the marriage and is not property referred to in subsections (2) and (3), the Court shall distribute that property equally between the spouses unless it appears to the Court that it

would not be just and equitable to do so, taking into consideration the matters in section 8.

RSA 2000 cM-8 s7;2003 cF-4.5 s121

Matters to be considered

8 The matters to be taken into consideration in making a distribution under section 7 are the following:

- (a) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
- (b) the contribution, whether financial or in some other form, made by a spouse directly or indirectly to the acquisition, conservation, improvement, operation or management of a business, farm, enterprise or undertaking owned or operated by one or both spouses or by one or both spouses and any other person;
- (c) the contribution, whether financial or in some other form, made directly or indirectly by or on behalf of a spouse to the acquisition, conservation or improvement of the property;
- (d) the income, earning capacity, liabilities, obligations, property and other financial resources
 - (i) that each spouse had at the time of marriage, and
 - (ii) that each spouse has at the time of the trial;
- (e) the duration of the marriage;
- (f) whether the property was acquired when the spouses were living separate and apart;
- (g) the terms of an oral or written agreement between the spouses;
- (h) that a spouse has made
 - (i) a substantial gift of property to a third party, or
 - (ii) a transfer of property to a third party other than a bona fide purchaser for value;
- (i) a previous distribution of property between the spouses by gift, agreement or matrimonial property order;
- (j) a prior order made by a court;

- (k) a tax liability that may be incurred by a spouse as a result of the transfer or sale of property;
- (l) that a spouse has dissipated property to the detriment of the other spouse;
- (m) any fact or circumstance that is relevant.

RSA 1980 cM-9 s8

Power of the Court

9(1) If part of the property of the spouses is situated in Alberta and part elsewhere, the Court may distribute the property situated in Alberta in such a way as to give effect to the distribution under section 7 of all the property wherever it is situated.

(2) The Court, in order to effect a distribution under section 7, may do any one or more of the following:

- (a) order a spouse to pay money or transfer an interest in property to the other spouse;
- (b) order that property be sold and that the proceeds be divided between the spouses as the Court directs;
- (c) by order declare that a spouse has an interest in property notwithstanding that the spouse in whose favour the order is made has no legal or equitable interest in the property.

(3) To give effect to an order under this section the Court may do any one or more of the following:

- (a) order a spouse to pay money over a period of time with or without interest;
- (b) order a spouse to give security for all or part of any payment;
- (c) charge property with all or part of a payment to be made under the order and provide for the enforcement of that charge;
- (d) prescribe the terms and conditions of a sale ordered under subsection (2);
- (e) require a spouse, as a condition of an order, to surrender all claims to property in the name of the other spouse;
- (f) require a spouse, as a condition of an order, to execute a release of dower rights under the *Dower Act* with respect to all or any property owned by the other spouse or transferred to the other spouse;

- (g) impose a trust in favour of a spouse with respect to an interest in property;
- (h) vary the terms of an order made under subsection (2) in accordance with this subsection;
- (i) if property is owned by spouses as joint tenants, sever the joint tenancy;
- (j) make any other order that in the opinion of the Court is necessary.

RSA 1980 cM-9 s9

Return of gift or property when insufficient consideration

10(1) When an application has been made for a matrimonial property order and the Court is satisfied that

- (a) a spouse has
 - (i) transferred property to a person who is not a bona fide purchaser for value, or
 - (ii) made a substantial gift of property,
- (b) the spouse making the transfer or gift did so with the intention of defeating a claim that the other spouse may have under this Part,
- (c) the transferee or donee accepted the transfer or gift when the transferee or donee knew or ought to have known that the transfer or gift was made with the intention of defeating a claim a spouse may have under this Part, and
- (d) the transfer or gift was made not more than one year before the date on which either spouse commenced the application for the matrimonial property order,

the Court may do any one or more of the things referred to in subsection (2).

(2) If subsection (1) applies, the Court may do any one or more of the following:

- (a) order the transferee or donee to pay or transfer all or part of the property to a spouse;
- (b) give judgment in favour of a spouse against the transferee or donee for a sum not exceeding the amount by which the share of that spouse under the matrimonial property order is reduced as a result of the transfer or gift;

(c) consider the property transferred or the gift made to be part of the share of the spouse who transferred the property or made the gift, when the Court makes a matrimonial property order.

(3) For the purposes of this section, the value of the property transferred or the gift shall be the market value at the time of the trial.

(4) If a spouse applies for an order under subsection (1), the applicant shall serve the transferee or donee with notice of the application and shall include the allegations made and the nature of the claim of the applicant as it affects the transferee or donee.

(5) A transferee or donee who is served with notice under this section is deemed to be a party to the application for the matrimonial property order as a defendant with respect to any allegation or claim that affects the transferee or donee.

RSA 1980 cM-9 s10

Application by spouse of deceased

11(1) Subject to this section, an application for a matrimonial property order may be made or continued by the surviving spouse after the death of the other spouse.

(2) A matrimonial property order may be made on the application of a surviving spouse only if an application for a matrimonial property order could have been commenced immediately before the death of the other spouse.

(3) When a matrimonial property order is made in favour of a surviving spouse, the Court, in addition to the matters in section 8, shall take into consideration any benefit received by the surviving spouse as a result of the death of the deceased spouse.

(4) An application by a surviving spouse for a matrimonial property order may not be commenced more than 6 months after the date of issue of a grant of probate or administration of the estate of the deceased spouse.

RSA 1980 cM-9 s11

Suspension of administration of deceased's estate

12 The Court may make an order suspending in whole or in part the administration of the estate of the deceased spouse until an application for a matrimonial property order has been determined.

RSA 1980 cM-9 s12

Consent to distribution of estate

13(1) Until the expiration of 6 months from the date of issue of the grant of probate or administration of the estate of a deceased spouse, the executor, administrator or trustee shall not distribute

any portion of the estate to a beneficiary without the consent of the living spouse or an order of the Court.

(2) If

- (a) an executor, administrator or trustee distributes a portion of the estate contrary to subsection (1), and
- (b) the Court makes a matrimonial property order with respect to property in the estate of the deceased spouse,

the executor, administrator or trustee is personally liable to the living spouse for any loss to that spouse as a result of the distribution.

RSA 1980 cM-9 s13

Distribution in accordance with Court order

14(1) If an application for a matrimonial property order is made or continued by a spouse, the executor, administrator or trustee of the deceased spouse shall hold the estate subject to any matrimonial property order that may be made, and the executor, administrator or trustee shall not proceed with the distribution of the estate other than in accordance with the matrimonial property order.

(2) If an executor, administrator or trustee distributes a portion of the estate contrary to subsection (1), the executor, administrator or trustee is personally liable to the living spouse for any loss to that spouse as a result of the distribution.

RSA 1980 cM-9 s14

Property deemed never part of estate

15 Money paid to a living spouse or property transferred to a living spouse under a matrimonial property order is deemed never to have been part of the estate of the deceased spouse with respect to a claim against the estate

- (a) by a beneficiary under a will,
- (b) by a beneficiary under the *Intestate Succession Act*, or
- (c) by a dependant under the *Dependants Relief Act*.

RSA 2000 cM-8 s15;2002 cA-4.5 s54

Actions continued by estate

16 Where a person dies after commencing an action under this Part,

- (a) the action may be continued by the estate of the deceased person, and

- (b) the rights conferred on that person under this Part prior to that person's death survive that person's death for the benefit of that person's estate.

RSA 1980 cM-9 s16;1991 c21 s24

Question re other matrimonial cause

17(1) If a question respecting property arises between spouses in any other matrimonial cause, the Court may decide the question as if it had been raised in proceedings under this Part.

(2) If in an application under this Part it appears to the Court that it is necessary or desirable to have other matters determined first or at the same time, the Court may direct that the application be adjourned until those matters are determined or brought before the Court.

RSA 1980 cM-9 s17

Effect on Dependants Relief Act

18(1) Nothing in this Act affects the right of a surviving spouse to make an application under the *Dependants Relief Act*.

(2) An application by a surviving spouse under the *Dependants Relief Act* may be joined with an application under this Part.

RSA 2000 cM-8 s18;2002 cA-4.5 s54

Part 2 Matrimonial Home Possession

Grant of exclusive possession of home

19(1) The Court, on application by a spouse, may by order do any one or more of the following:

- (a) direct that a spouse be given exclusive possession of the matrimonial home;
- (b) direct that a spouse be evicted from the matrimonial home;
- (c) restrain a spouse from entering or attending at or near the matrimonial home.

(2) In addition to making an order under subsection (1), the Court may, by order, give a spouse possession of as much of the property surrounding the matrimonial home as is necessary, in the opinion of the Court, for the use and enjoyment of the matrimonial home.

(3) An order under this section may be made subject to any conditions and for any time that the Court considers necessary.

(4) An order under this section may be varied by the Court on application by a spouse.

(5) An order under this section does not create a subdivision within the meaning of Part 17 of the *Municipal Government Act*.
RSA 1980 cM-9 s19;1995 c24 s100

Matters to be considered

20 In exercising its powers under this Part, the Court shall have regard to

- (a) the availability of other accommodation within the means of both the spouses,
- (b) the needs of any children residing in the matrimonial home,
- (c) the financial position of each of the spouses, and
- (d) any order made by a court with respect to the property or the support or maintenance of one or both of the spouses.

RSA 2000 cM-8 s20;2003 cF-4.5 s121

Precedence of order

21 An order made under this Part takes effect notwithstanding an order under Part 1 or a subsequent order for the partition and sale of the matrimonial home.

RSA 1980 cM-9 s21

Registration of order for possession

22(1) If an order is made under section 19 with respect to a matrimonial home and the matrimonial home or part of it is real property that

- (a) is owned by one or both of the spouses,
- (b) is leased by one or both of the spouses for a term of more than 3 years, or
- (c) is the subject of a life estate in favour of one or both of the spouses,

the order may be registered with the Registrar of Land Titles.

(2) An order registered under this section binds the estate or interest of every description that the spouse or spouses have in the property to the extent stipulated in the order.

(3) A spouse against whose estate or interest an order is registered under this section may only dispose of or encumber that spouse's estate or interest with the consent in writing of the spouse in possession or under an order of the Court.

RSA 1980 cM-9 s22;1996 c32 s5(40)

Registration of financing statement re mobile home

23 If the Court makes an order under section 19 and the matrimonial home is a mobile home owned or leased by one or both of the spouses, a financing statement may be registered in the Personal Property Registry under the *Personal Property Security Act*.

RSA 1980 cM-9 s23;1983 cC-7.1 s25;1988 cP-4.05 s89

Spouse as tenant

24 If a matrimonial home is leased by one or both of the spouses under an oral or written lease and the Court makes an order giving possession of the matrimonial home to one spouse, that spouse is deemed to be the tenant for the purposes of the lease.

RSA 1980 cM-9 s24

Exclusive use of household goods

25(1) The Court, on application by a spouse, may by order direct that a spouse be given the exclusive use and enjoyment of any or all of the household goods.

(2) An order under subsection (1) may be made subject to any conditions and for any time that the Court considers necessary.

(3) An order made under this section may be varied by the Court on application by a spouse.

RSA 1980 cM-9 s25

Registration of financing statement re household goods

26 If the Court makes an order with respect to household goods under section 25, a financing statement may be registered in the Personal Property Registry under the *Personal Property Security Act*.

RSA 1980 cM-9 s26;1983 cC-7.1 s25;1988 cP-4.05 s89

Effect of registration

27(1) If a financing statement is registered under section 23 or 26, the financing statement

- (a) is notice of the interests of the spouses in the property described in the financing statement during the time that the registration is effective, and
- (b) takes effect, as against subsequent creditors, purchasers and mortgagees, only from the date of registration of the financing statement.

(2) A spouse against whose interest in property a financing statement is registered under section 23 or 26 may only dispose of or encumber that interest with the consent in writing of the spouse in possession or under an order of the Court.

RSA 1980 cM-9 s27;1988 cP-4.05 s88;1996 c28 s27

Rights additional to rights under Dower Act

28(1) The rights under this Part are in addition to and not in substitution for or derogation of the rights of a spouse under the *Dower Act*.

(2) If a spouse is in possession of a matrimonial home and a life estate in the matrimonial home vests in that spouse pursuant to the *Dower Act*, the registration of an order under this Part may be cancelled by the Registrar of Land Titles on application by that spouse.

RSA 1980 cM-9 s28

Cancellation of registration of order

29(1) The person against whose property an order is registered under section 22 may apply to the Court for an order directing the Registrar of Land Titles to cancel the registration.

(2) The person against whose property an order is registered under section 23 or 26 may apply to the Court for an order cancelling the registration.

(3) The Court may make an order under this section on any conditions the Court considers necessary.

RSA 1980 cM-9 s29

Methods of making application

30(1) An application under this Part

- (a) repealed 2009 c53 s109,
- (b) may be joined with, or heard at the same time as, a matrimonial cause between the spouses, or
- (c) may be made as an application in an action or proceeding between the spouses under the *Family Law Act* or Part 1 of this Act.

(2) An order may be made under this Part on an ex parte application if the Court is satisfied that there is a danger of injury to the applicant spouse or a child residing in the matrimonial home as a result of the conduct of the respondent spouse.

(3) If an application is made ex parte, the Court may dispense with service of notice of the application or direct that the application be served at a time and in a manner that it sees fit.

RSA 2000 cM-8 s30;2003 cF-4.5 s121;
2009 c53 s109

Part 3 General

Disclosure of property by spouses

31(1) If an application has been commenced under Part 1, each spouse shall file with the Court and serve on the other spouse a statement, verified by oath, disclosing particulars of all the property of that spouse, whether it is situated in Alberta or elsewhere.

(2) A statement made under subsection (1) shall include particulars of property disposed of by that spouse within one year before the application was commenced.

(3) A statement made under subsection (1) shall

- (a) be in the form, and
- (b) contain the information,

prescribed by the regulations.

RSA 1980 cM-9 s31

Regulations

32 The Lieutenant Governor in Council may make regulations

- (a) as to the procedure to be followed and the forms to be used under this Act;
- (b) prescribing the time within which documents are to be filed and served under this Act;
- (c) prescribing the information to be contained in a statement made under section 31.

RSA 1980 cM-9 s32

Disposition prohibited during proceedings

33(1) If proceedings have been commenced under this Act, a spouse who knows or has reason to believe that the proceedings have been commenced shall not

- (a) dispose of or encumber any household goods, or
- (b) except in an emergency, remove from the matrimonial home any household goods that are household appliances or household effects or that form part of the household furnishings of that matrimonial home,

without an order of the Court or the consent of the other spouse.

(2) A person who contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$1000.

RSA 1980 cM-9 s33

Prevention of gift or sale

34(1) If the Court is satisfied that a spouse intends to transfer property to a person who is not a bona fide purchaser for value or to make a substantial gift of property that may defeat a claim of the other spouse under this Act, the Court may, by order, restrain the making of the transfer or gift.

(2) An application for an order under subsection (1) may be made while the spouses are cohabiting.

(3) An application for an order under subsection (1) may be made as an application in proceedings commenced under this Act or by separate application.

(4) An application for an order under subsection (1) may be made ex parte.

(5) If an application is made ex parte, the Court may dispense with service of notice of the application or direct that the application be served at a time and in a manner that it sees fit.

RSA 2000 cM-8 s34;2009 c53 s109

Filing certificate of lis pendens

35(1) A spouse who commences proceedings under this Act may file a certificate of lis pendens with the Registrar of Land Titles.

(2) When the Registrar accepts a certificate of lis pendens for registration under this section, the Registrar shall make a memorandum of the certificate of lis pendens on the certificate of title to which it relates.

(3) If a certificate of lis pendens has been registered under this section, any instrument that

(a) is registered after the registration of the certificate of lis pendens, and

(b) purports to affect land included in the certificate of title,

is subject to the claim of the spouse who filed the certificate of lis pendens.

RSA 1980 cM-9 s35;1988 c27 s68;1996 c32 s5(40)

Presumption of advancement

36(1) In making a decision under this Act, the Court shall not apply the doctrine of presumption of advancement to a transaction

between the spouses in respect of property acquired by one or both spouses before or after the marriage.

(2) Notwithstanding subsection (1),

- (a) the fact that property is placed or taken in the name of both spouses as joint owners is proof, in the absence of evidence to the contrary, that a joint ownership of the beneficial interest in the property is intended, and
- (b) money that is deposited with a financial institution in the name of both spouses is deemed to be in the name of the spouses as joint owners for the purposes of clause (a).

RSA 1980 cM-9 s36

Agreements between spouses

37(1) Part 1 does not apply to property that is owned by either or both spouses or that may be acquired by either or both of them, if, in respect of that property, the spouses have entered into a subsisting written agreement with each other that is enforceable under section 38 and that provides for the status, ownership and division of that property.

(2) An agreement under subsection (1) may be entered into by 2 persons in contemplation of their marriage to each other but is unenforceable until after the marriage.

(3) An agreement under subsection (1)

- (a) may provide for the distribution of property between the spouses at any time including, but not limited to, the time of separation of the spouses or the dissolution of the marriage, and
- (b) may apply to property owned by both spouses and by each of them at or after the time the agreement is made.

(4) An agreement under subsection (1) is unenforceable by a spouse if that spouse, at the time the agreement was made, knew or had reason to believe that the marriage was void.

RSA 1980 cM-9 s37

Formal requirements for agreement

38(1) An agreement referred to in section 37 is enforceable if each spouse or each person, in the case of persons referred to in section 37(2), has acknowledged, in writing, apart from the other spouse or person

- (a) that the spouse or person is aware of the nature and the effect of the agreement,

- (b) that the spouse or person is aware of the possible future claims to property the spouse or person may have under this Act and that the spouse or person intends to give up these claims to the extent necessary to give effect to the agreement, and
 - (c) that the spouse or person is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse or person.
- (2)** The acknowledgement referred to in subsection (1) shall be made before a lawyer other than the lawyer acting for the other spouse or person or before whom the acknowledgement is made by the other spouse or person.

RSA 1980 cM-9 s38



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