

**CREATING, ATTACKING AND DEFENDING
PRE-MARITAL AND POST-MARITAL AGREEMENTS**

**DALLAS BAR ASSOCIATION
PROBATE, TRUSTS AND ESTATES SECTION**

November 27, 2012

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CREATING, ATTACKING AND DEFENDING PRE-MARITAL AND POST-MARITAL AGREEMENTS

I. Texas Marital Property – A Primer

A. The Marital Relationship

1. Federal Law – Defense of Marriage Act (“DOMA”)

Marriage is defined for federal law purposes as:

“only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.” (Defense of Marriage Act, 1 U.S.C. § 7, (“DOMA”))

If a state enacts a law or if a state court recognizes a same-sex relationship as a marriage, no other state is required to respect that law or ruling:

“No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.” (28 U.S.C. § 1738C)

2. Texas Constitution

The Texas Constitution both defines “marriage” and prohibits legal relationships identical to or similar to marriage:

“32. Marriage
(a) Marriage in this state shall consist only of the union of one man and one woman.
(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.”

A same-sex relationship cannot be classified as a “marriage” in Texas.

3. Tex. Fam. Code

Every marriage entered into in Texas is presumed to be valid unless expressly made void by Chapter 6 of the Family Code or unless expressly made voidable by Chapter 6 of the Family Code and annulled. Tex. Fam. Code §1.101. Section 6.204 of the Tex. Fam. Code denies recognition of same-sex relationships:

(a) In this section, "civil union" means any relationship status other than marriage that: (1) is intended as an alternative to marriage or applies primarily to cohabitating persons; and (2) grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage.

(b) A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.

(c) The state or an agency or political subdivision of the state may not give effect to a: (1) public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction; or (2) right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction.

4. Informal Marriages

“Common-law marriages” have long been recognized in Texas. *Grigsby v. Reib*, 105 Tex. 597, 153 S.W. 1124 (1913). Technically, they are referred to as an “informal marriage.” The requirements of an informal marriage are codified in Tex. Fam. Code §2.401. PROOF OF INFORMAL MARRIAGE:

“(a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that: (1) a declaration of their marriage has been signed as provided by this subchapter; or (2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

(b) If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married.

- (c) A person under 18 years of age may not: (1) be a party to an informal marriage; or (2) execute a declaration of informal marriage under Section 2.402.” (*Emphasis added*)

It is not necessary to obtain a marriage license or have an official or ministerial ceremony for the marriage to be lawful and binding. *See generally*, Tex. Jur. III, Family Law, § 35 (“Tex. Jur.”).

There are three required elements for a relationship between a man and a woman in Texas to be regarded as a common-law marriage or an informal marriage:

- (i) An agreement presently to become husband and wife;
- (ii) The couple living together pursuant to the agreement as husband and wife; and
- (iii) The holding out of each other to the public as husband and wife.

If the nature of the relationship is kept secret, it is not a common-law marriage, *Lee v. Lee*, 981 S.W.2d 903 (Tex. App. Houston 1st Dist. 1998) inasmuch as secrecy is inconsistent with a “public holding out.” *Ex parte Threet*, 160 Tex. 482, 333 S.W.2d 361 (1960). It is necessary that all three elements must exist at the same time. *Bolash v. Heid*, 733 S.W.2d 698 (Tex. App. San Antonio 1987); *Ballesteros v. Jones*, 985 S.W.2d 485 (Tex. App. San Antonio 1998); *Lee v. Lee*, *supra*; *Nichols v. Lightle*, 153 S.W.3d 563 (Tex. App. Amarillo 2004), *reh'g overruled and review denied*, (2004). **Cohabitation by itself is insufficient to establish a common-law marriage.** *Russell v. Russell*, 865 S.W.2d 929 (Tex. 1993)

B. Texas Marital Property Rules

1. Inception of Title

- a. The character of marital property is determined at the time of "inception of title."
- b. Inception of title occurs when a party first has a right of claim to the property by virtue of which title is finally vested. *Welder v. Lambert*, 22 S.W. 281, 284-86 (Tex. 1898); *Henry S. Miller Co. v. Evans*, 452 S.W.2d 426, 430 (Tex. 1970); *Garza v. Garza*, 217 S.W.3d 538, 550-551 (Tex.App.--San Antonio 2006, rehearing overruled).

c. In determining inception of title, the important thing is the date the right to the property was acquired, not the date of possession. *Fuhrman v. Fuhrman*, 302 S.W.2d 205 (Tex. App. El Paso 1957).

d. Property which has its inception of title before marriage is separate property. *Parnell v. Parnell*, 811 S.W.2d 267, 269 (Tex. App.--Houston [14th Dist.] 1991, no writ) (real estate owned by husband prior to marriage was his separate property); *Gutierrez v. Gutierrez*, 791 S.W.2d 659, 665 (Tex. App.--San Antonio 1990, no writ) (car purchased by husband prior to marriage was his separate property).

e. Property which has its inception of title during marriage is community property unless it is separate property. Tex. Fam. Code § 3.002.

f. Property which has its inception of title after the marriage is dissolved is not community property. *Burgess v. Easley*, 893 S.W.2d 87, 90-91 (Tex. App.--Dallas 1994, no writ) (although deed was executed by husband's father during marriage, it was not delivered to husband until after divorce; since a conveyance is not effective until delivery, the property was not community property); *Snider v. Snider*, 613 S.W.2d 8, 11 (Tex. Civ. App.--El Paso 1981, no writ) (dividend declared after death of husband belonged to his heirs, not the community estate). *Berry v. Berry*, 647 S.W.2d 945, 948 (Tex. 1983).

2. Separate Property

a. Texas Constitution, Art. 16, Sec. 15.

All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then then existing or to be acquired, whereupon the portion or interest set aside to to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; spouses also may from time to time, time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned or which thereafter might be acquired by only one of them, shall be the separate

property of that spouse; if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise arise from that gift of property; spouses may agree in writing that all or part part of their community property becomes the property of the surviving spouse on the death of a spouse; and spouses may agree in writing that all or or part of the separate property owned by either or both of them shall be the the spouses' community property. (Amended Nov. 2, 1948, Nov. 4, 1980, Nov. 3, 1987, and Nov. 2, 1999.)

b. Tex. Fam. Code §3.001:

“A spouse's separate property consists of:

- (1) the property owned or claimed by the spouse before marriage;
- (2) the property acquired by the spouse during marriage by gift, devise, or descent; and
- (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.”

3. Community Property

Community property consists of the property, other than separate property, acquired by either spouse during marriage. Tex. Fam. Code § 3.002.

The Texas Constitution and the Tex. Fam. Code specifically define separate property. By implication, statute, and common law, if it is not separate property, then it is automatically community property. If acquired before marriage by any method, or during marriage by gift, devise or descent, the property is separate property. *Hilley v. Hilley*, 342, S.W.2d 565, 573 (Tex. 1961). See also *Lee v. Lee*, 247 S.W. 828, 832 (Tex. 1923), which states that “[o]ur lawmakers have not troubled themselves to define community property, other than to say that it shall include all property acquired by either the husband or wife during marriage, except that which is the separate property of either one or the other.”

4. Distinguishing Between Community and Separate – Examples

a. Trust Income

Accrued but undistributed trust income is not community if the trustee has the right to withhold distribution because of a provision in the trust instrument. *Buckler v. Buckler*, 424 S.W. 2d 514 (Tex. App. Fort Worth 1967)

If a married beneficiary (i) has an interest in the corpus of the trust and (ii) receives income from the principal, the income is characterized as community property. *Sharma v. Routh*, 2008 WL 5443213 (Tex. App. Houston 2008)

Property held by a trustee for the benefit of a spouse is not owned by a spouse, and cannot be marital property.

Where the spouse/beneficiary has an unconditional right to have the property free of trust, then the property is treated as if it is owned by the spouse, even though still in the hands of the trustee. Where the spouse is both settlor and beneficiary of the trust, the income of the trust property is likely community income. Where the trust is established by gift or will, case law is conflicting as to whether trust distributions are separate or community property.

b. Gifts

A gift is a transfer of property made voluntarily and gratuitously. *Hilley v. Hilley*, 342 S.W.2d at 568. A gift requires 1) an intent to make a gift; 2) delivery of the property; and 3) acceptance of the property. See *Grimsley v. Grimsley*, 632 S.W.2d 174, 177 (Tex. App.--Corpus Christi 1982, no writ). The burden of proving a gift is on the party claiming the gift. *Woodworth v. Cortez*, 660 S.W.2d 561, 564 (Tex. App.--San Antonio 1983, writ ref'd n.r.e.).

Lack of consideration is an essential characteristic of a gift. An exchange of consideration precludes a gift. *Pemelton v. Pemelton*, 809 S.W.2d 642, 647 (Tex. App.--Corpus Christi 1991), rev'd on other grounds. *Heggen v. Pemelton*, 836 S.W.2d 145 (Tex. 1992); *Kunkel v. Kunkel*, 515 S.W.2d 941 (Tex. Civ. App.--Amarillo 1974, writ ref'd n.r.e.).

A controlling factor in establishing a gift is the donative intent of the grantor at the time of the conveyance. *Ellebracht v. Ellebracht*, 735 S.W.2d 658, 659 (Tex. App.--Austin 1987, no writ). A gift cannot occur without the intent to make a gift. *Campbell v. Campbell*, 587 S.W.2d 513, 514 (Tex. Civ. App.--Dallas 1979, no writ).

A conveyance of title from parent to child is presumed to be a gift, but the presumption is rebuttable by evidence showing the facts and circumstances surrounding the deed's execution in addition to the deed's recitations. *Woodworth v. Cortez*, 660 S.W.2d 561, 564 (Tex. App.--1983, writ ref'd n.r.e.).

i. Gift to Both Spouses

A gift made by a third party to both spouses leaves the spouses owning the gifted asset in equal undivided one-half separate property interests. *Roosth v. Roosth*, 889 S.W.2d 445, 457 (Tex. App.--Houston [14th Dist.] 1994, writ denied) (engagement gifts and wedding gifts to both spouses were one-half the separate property of each); *Kamel v. Kamel*, 721 S.W.2d 450, 452 (Tex. App.--Tyler 1986, no writ) (where husband's father made payments on a liability owed by both spouses, the payments were a gift one-half to each spouse).

ii. Gift Between Spouses

A spouse can make a gift of community property to the other spouse. See *Pankhurst v. Weitingger & Tucker*, 850 S.W.2d 726, 730 (Tex. App.--Corpus Christi 1993, writ denied) (husband gave one-half of his community property interest in a cause of action to wife, to hold as her separate property).

c. Land - Title Acquired Before Marriage

In Hopf v. Hopf, 841 S.W.2d 898, 900 (Tex. App.--Houston [14th Dist.] 1992, no writ), proof that husband acquired his interest in a building before marriage established that the interest was his separate property. In *Murray v. Murray*, 15 S.W.3d 202, 205 (Tex. App. – Texarkana 2000, no pet). The spouses purchased and received title to real estate prior to marriage. The court found that the spouses owned the property as separate property in proportional percentages to what they contributed to the total purchase price.

i. Land: Contract For Deed Before Marriage

In *Riley v. Brown*, 452 S.W.2d 548 (Tex. Civ. App.--Tyler 1970, no writ), where realty was acquired under a contract for deed, or installment land contract, inception of title occurred when the contract was entered into, not when title was ultimately conveyed. In *In Welder v. Lambert*, 91 Tex. 510, 44 S.W. 281, 284-85 (1898), land was put under contract for colonization with the husband and

wife. After the wife died, despite husband's remarriage, that contract right still belonged to the first marriage, so that title ultimately acquired during the second marriage was not community property of the second marriage. In *Dawson v. Dawson*, 767 S.W.2d S.W.2d 949 (Tex. App.--Beaumont 1989, no writ), realty placed by husband under contract for deed prior to marriage was his separate property, despite the fact that title was taken during marriage in the name of both spouses.

ii. **Land: Lease/Option with Deed in Escrow Before Marriage**

In *Roach v. Roach*, 672 S.W.2d 524 (Tex. App.--Amarillo 1984, no writ), where an unmarried man entered into a lease-option agreement pertaining to land, but the deed was placed into escrow, and delivered after marriage, inception of title occurred at the time of the original agreement, not when the deed was removed from escrow and delivered to the husband. The land was his separate property.

iii. **Land: Earnest Money Contract Before Marriage**

In *Wierzchula v. Wierzchula*, 623 S.W.2d 730 (Tex. App.--Houston [1st Dist.] 1981, no writ), where a man entered into an earnest money contract to purchase realty shortly before marriage, but the deed was received during marriage, inception of title occurred when the earnest money contract was signed, so that the property was the husband's separate property. In *Carter v. Carter*, 736 S.W.2d 775 (Tex. App.--Houston [14th Dist.] 1987, no writ), the husband signed an earnest money contract and paid \$1,000.00 in earnest money shortly before marriage. The deed was received during marriage in the name of both husband and wife, and both husband and wife signed the note and deed of trust. Citing *Wierzchula*, the court of appeals held that, under the inception of title rule, title related back to the date the earnest money contract was signed and, since that predated marriage and since only the husband had signed the earnest money contract, the realty was his separate property.

d. **Land: Acquired During Marriage**

i. **Land: Earnest Money Contract During Marriage**

Where spouses enter into an earnest money contract to purchase land during marriage, the land is community property. *Leach v. Meyer*, 284 S.W.2d 164 (Tex. Civ. App.--Austin 1955, no writ).

ii. **Land: Purchase During Marriage for Cash**

Land purchased during marriage has the character of the consideration furnished for the land. Property purchased with separate and community funds is owned as tenants in common by the separate and community estates. *Cockerham v. Cockerham*, 527 S.W.2d 162, 168 (Tex. 1975). Percentages of ownership are determined by the amount of funds contributed by each estate to the total purchase price. *Gleich v. Bongio*, 128 Tex. 606, 99 S.W.2d 881, 883 (1937).

e. **Funds on Deposit**

Tex. Fam. Code § 3.003, provides **property possessed by either spouse during or on dissolution of marriage is presumed to be community property, and the party claiming it as separate has the burden to overcome this presumption by clear and convincing evidence.** *Estate of Hanau v. Hanau*, 730 S.W.2d 663, 667 (Tex. 1987); *Tarver v. Tarver*, 394 S.W.2d 780, 783 (Tex. 1965); *Harris v. Harris*, 765 S.W.2d 798, 802 (Tex. App.--Houston [14th Dist.] 1989, writ denied). To discharge this burden a spouse must trace and clearly identify the property claimed as separate. If separate property and community property have been so commingled as to defy resegregation and identification, the statutory presumption prevails. However, when separate property has not been commingled or its identity as such can be traced, the statutory presumption is dispelled. *Hanau*, 730 S.W.2d at 667; *Tarver*, 394 S.W.2d at 783; *Harris*, 765 S.W.2d at 802. As long as separate property can be definitely traced and identified, it remains separate property regardless of the fact that it may undergo mutations and changes. *Norris v. Vaughan*, 260 S.W.2d 676, 679 (Tex. 1953).

Courts have found no difficulty in following separate funds through bank accounts. *Sibley v. Sibley*, 286 S.W.2d 657, 659 (Tex. Civ. App.--Dallas 1955, writ dismissed). A showing that community and separate funds were deposited in the the same account does not divest the separate funds of their identity and establish the the entire amount as community when the separate funds may be traced and the trial court is able to determine accurately the interest of each party. *Holloway v.*

Holloway, 671 S.W.2d 51, 60 (Tex. App.--Dallas 1983, writ dism'd); *Harris v. Ventura*, 582 S.W.2d 853, 855 (Tex. Civ. App.--Beaumont 1979, no writ).

When separate funds can be traced through a joint account to specific property purchased with those funds, without surmise or speculation about funds withdrawn from the account in the interim, then the property purchased is also separate. See *McKinley v. McKinley*, 496 S.W.2d 540, 543-44 (Tex. 1973).

f. Mineral Interests/Income

The character of a mineral interest is determined according to general marital property rules. See *In re Marriage of Read*, 634 S.W.2d 343, 346 (Tex. App.--Amarillo 1982, writ dism'd) (working interest was community property). Income from a community property mineral interest is community property.

Where the mineral interest is separate property, royalty income is separate property; *Norris v. Vaughan*, 152 Tex. 491, 260 S.W.2d 676, 679 (1953) (this is so because a royalty payment is for the extraction or waste of the separate estate, as opposed to income from the separate estate); *Welder v. Welder*, 794 S.W.2d 420, 425 (Tex. App.--Corpus Christi 1990, no writ).

Where the mineral interest is separate property, lease bonuses are separate property; *Lessing v. Russek*, 234 S.W.2d 891, 894 (Tex. Civ. App.--Austin 1950, writ ref'd n.r.e.).

Where the mineral interest is separate property, delay rentals are community property; *McGarraugh v. McGarraugh*, 177 S.W.2d 296, 300-301 (Tex. Civ. App.--Amarillo 1943, writ dism'd).

g. Passive Income (Dividends, Interest, Rentals)

Cash dividends from corporate stock are community property. See *Hilliard v. Hilliard*, 725 S.W.2d 722, 723 (Tex. App.--Dallas 1985, no writ); *Bakken v. Bakken*, 503 S.W.2d 315, 317 (Tex. Civ. App.--Dallas 1973, no writ).

Stock dividends deriving from separate property stock are separate property. *Duncan v. U.S.*, 247 F.2d 845, 855 (5th Cir. 1957).

Interest income is community property. *Braden v. Gose*, 57 Tex. 37 (1882).

Rentals from real estate are community property. *Arnold v. Leonard*, 114 Tex. 535, 273 S.W. 799, 802 (1925); *Coggin v. Coggin*, 204 S.W.2d 47, 52 (Tex. Civ. App.--Amarillo 1947, no writ) (rents and crops from separate property are community property).

h. Patent Royalties

Royalties received by Husband during marriage from patents he had obtained prior to marriage were characterized as community property. *Alsensz v. Alsensz*, 101 S.W.3d 648 (Tex. App. – Houston [1st Dist.] 2003, pet. denied).

i. Wages

Wages earned during marriage are community property, while wages earned before marriage or after dissolution of marriage are separate property.

The fact that a spouse may have entered into an employment agreement prior to marriage does not cause the wages of that spouse earned during marriage to be separate property. See *Dessommes v. Dessommes*, 543 S.W.2d 165 (Tex. Civ. App.--Texarkana 1976, writ ref'd n.r.e.); *Moore v. Moore*, 192 S.W.2d 929 (Tex. Civ. App.--Fort Worth 1946, no writ). The fact that an employment agreement is contracted during marriage does not make wages earned after the end of the marriage community property. See *Echols v. Austron, Inc.*, 529 S.W.2d 840 (Tex. Civ. App.--Austin 1975, writ ref'd n.r.e.) (bonus paid to husband after divorce was his separate property).

j. Retirement Benefits & Fringe Benefits

Retirement benefits, to the extent they derive from employment during marriage, constitute community property. *Cearley v. Cearley*, 544 S.W.2d 661, 662 (Tex. 1976).

Defined Benefit Plan Retirement benefits are considered by Texas courts to be "a mode of employee compensation earned during a given period of employment." *Cearley v. Cearley*, 544 S.W.2d 661, 662 (Tex. 1976). Thus, retirement, annuity and pension benefits earned during marriage are part of the community estate, while benefits earned before and after the marriage are the employee spouse's separate property. See *Berry v. Berry*, 647 S.W.2d 945, 947 (Tex. 1983).

Tex. Fam. Code § 3.007 Property Interests in Certain Employee Benefits:

i. A spouse who is a participant in a defined benefit retirement plan has a separate property interest in the monthly accrued benefit the spouse had a right to receive on normal retirement age, as defined by the plan, as of the date of marriage, regardless of whether the benefit had vested.

ii. The community property interest in a defined benefit plan shall be determined as if the spouse began to participate in the plan on the date of marriage and ended that participation on the date of dissolution or termination of the marriage, regardless of whether the benefit had vested.

k. Stock Options

Character as Separate or Community - In *Bodin v. Bodin*, 955 S.W.2d 380, 381 (Tex. App.– San Antonio 1997, no pet.), the husband contended that employee stock options granted during marriage were his separate property because the options were not vested by the time of divorce. The appellate court rejected this position, saying that the fact that the options had not vested by the time of divorce did not make the options entirely separate property. The court analogized the options to non-vested military retirement benefits, which were declared to be divisible upon divorce in *Cearley v. Cearley*, 544 S.W.2d 661 (Tex. 1976).

Texas courts have consistently held that stock options acquired during marriage are a contingent property interest and a community asset subject to division upon divorce.

Tex. Fam. Code § 3.007(d) provides in relevant part that a spouse who is a participant in an employer-provided stock option plan or an employer-provided restricted stock plan has a separate property interest in the options or restricted stock granted to the spouse under the plan as follows:

i. if the option or stock was granted to the spouse before marriage but required continued employment during marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which the numerator is the period from the date the option or stock was granted until the date of marriage and the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed; and

ii. if the option or stock was granted to the spouse during the marriage but required continued employment after marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which the numerator is the period from the date of dissolution or termination of the marriage until the date the grant could be exercised or the restriction removed and the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed.

I. Texas Government Retirement Benefits

A spouse's right to Texas government employee retirement benefits are community property according to the ordinary principles of retirement benefits. *Irving Fireman's Relief and Retirement Fund v. Sears*, 803 S.W.2d 747, 749 (Tex. App.--Dallas 1990, no writ).

Firemen's retirement benefits divisible upon divorce; *Morgan v. Horton*, 675 S.W.2d 602, 604 (Tex. App.--Dallas 1984, no writ).

Teacher retirement funds divisible upon divorce; *Collida v. Collida*, 546 S.W.2d 708, 710 (Tex. Civ. App.--Beaumont 1977, writ dism'd) (firemen's retirement benefits divisible on divorce).

m. Federal Civil Service Retirement

Civil service retirement benefits earned during marriage are community property. *Hoppe v. Godeke*, 774 S.W.2d 368, 370 (Tex. App.--Austin 1989, writ denied). See 5 U.S.C.A. § 8331 et seq. (West 1980 & Pam. Supp. 1995).

Federal Railroad Retirement Benefits - The United States Supreme Court, in *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 99 S.Ct. 802, 59 L.Ed.2d 1 (1979), held that that retirement benefits payable under the federal Railroad Retirement Act were not not subject to division by a state court on divorce, by virtue of § 231m of the Act. See *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 401 (Tex. 1979) ("the [Supreme [Supreme Court's] opinion makes it clear that such benefits are not to be treated as 'property' and future benefits are not subject to division upon divorce as property"). However, with the Railroad Retirement Solvency Act of 1983, Congress Congress added a subsection to § 231m, expressly permitting state courts to characterize certain components of the benefits as community property. See 45 U.S.C.A. § 231m(b)(2) (West 1986). Under the new statute, railroad retirement benefits involve several statutory components. See 45 U.S.C.A. § 231b (West 1986).

1986). The "basic component" is described in § 231b(a), and is designed to provide provide benefits equivalent to those under social security. See H.R.Rep. No. 30(I), 30(I), 98th Cong., 1st Sess., reprinted in 1983 U.S.Code Cong. & Ad. News 729, 730-34. Section 231m of the statute provides that "[N]o annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated." Thus, state courts still cannot divide the basic component of of railroad retirement benefits in a divorce. See *Kamel v. Kamel*, 721 S.W.2d 450, 450, 452 (Tex. App.--Tyler 1986, no writ).

n. U.S. Military Retirement Benefits

Military retirement benefits earned from years of service during the marriage are community property. *Cearley v. Cearley*, 544 S.W.2d 661, 662 (Tex. 1976); *Taggart v. Taggart*, 552 S.W.2d 422 (Tex. 1977); *Busby v. Busby*, 457 S.W.2d 551 (Tex. 1970).

In *McCarty v. McCarty*, 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981), the U.S. Supreme Court declared that federal law preempted the division of military non-disability retired pay in a divorce. Congress later passed a statute permitting divorce courts to divide military retired pay provided that the state had sufficient jurisdictional ties specified in the statute. 10 U.S.C. § 1408 et seq. (the USFSPA), effective Feb. 1, 1983. Military retirement benefits remain preempted except to the extent that division is permitted under the USFSPA. *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2028, 104 L.Ed.2d 675 (1989).

Any portion of the military retirement attributable to employment prior to marriage is the employee spouse's separate property. *Bloomer v. Bloomer*, 927 S.W.2d 118 (Tex. App. - Houston [1st Dist.] Jun. 13, 1996) (No. 01-91-01428-CV), rehearing overruled Jul. 11, 1996, writ denied Dec. 13, 1996 (involving retirement which included time in military reserves). Any portion of the retirement attributable to employment after divorce is not community property *Berry v. Berry*, 647 S.W.2d 945, 947 (Tex. 1983).

The right to receive post-divorce cost-of-living increases on the non-employed spouse's share of the retirement is community property that can be awarded on divorce. *Sutherland v. Cobern*, 843 S.W.2d 127, 131 (Tex. App.--Texarkana 1992, writ denied).

o. Social Security Benefits

State courts have no power to divide Social Security disability benefits in a divorce due to preemption by federal law. *Richard v. Richard*, 659 S.W.2d 746, 748-49 (Tex. App.--Tyler 1983, no writ).

p. Disability Benefits

According to federal statute, Veteran's Benefits are not property. 38 U.S.C.A. § 101 (West 1991). They are not community property, and cannot be divided upon divorce. *Ex parte Burson*, 615 S.W.2d 192, 194-95 (Tex. 1981); *Kamel v. Kamel*, 721 S.W.2d 450, 453 (Tex. App.--Tyler 1986, no writ); *Ex parte Johnson*, 591 S.W.2d 453, 454 (Tex. 1979); *Ex parte Pummill*, 606 S.W.2d 707, 709 (Tex. Civ. App.--Fort Worth 1980, no writ).

Workers Compensation Benefits - The character of workers' compensation benefits is not controlled by the circumstances surrounding the inception of the right to these benefits. See *Hicks v. Hicks*, 546 S.W.2d 71, 73 (Tex. Civ. App.--Dallas 1977, no writ) (compensation for disability for a period after divorce is not community even though the injury may have occurred when the parties were married).

Effective September 1, 2005, in Tex. Fam. Code § 3.008(b) provides in relevant part:

“If a person becomes disabled or is injured, any disability insurance payment or workers' compensation payment is community property to the extent it is intended to replace earnings lost while the disabled or injured person is married. To the extent that any insurance payment or workers' compensation payment is intended to replace earnings while the disabled or injured person is not married, the recovery is the separate property of the disabled or injured spouse.”

q. Contractual Rights

Private Life Insurance - *McCurdy v. McCurdy*, 372 S.W.2d 381 (Tex. Civ. App.--Waco 1963, writ ref'd) held that the inception of title rule applies to life insurance.

Casualty Insurance - One case says that the insurance proceeds have the character of the asset insured, regardless of the character of the policy. *Rolator v. Rolator*, 198 S.W. 391, 393 (Tex. Civ. App.--Dallas 1917, no writ). This holding has now been codified in Tex. Fam. Code § 3.008(a).

The character of contract damages is determined by the loss being compensated by the damages. For example, a claim for lost profits from a family business is community property. *Brazos Valley Harvestore Systems, Inc. v. Beavers*, 535 S.W.2d 797, 799 (Tex. Civ. App.--Tyler 1976, writ dismissed).

r. Money Loaned

A debt for money loaned by a spouse before marriage is separate property.

The character of a loan made during marriage depends on the character of the funds loaned. See *Snider v. Snider*, 613 S.W.2d 8, 11 (Tex. Civ. App.--El Paso 1981, no writ) (a claim against a third party existing on the day of marriage is separate property). *Mortenson v. Trammell*, 604 S.W.2d 269, 275-76 (Tex. Civ. App.--Corpus Christi 1980, writ refused n.r.e.) (where wife borrowed \$3,500.00 using her separate credit and loaned the money to her daughter, the loan owed by the daughter was wife's separate property). In *Snider*, proof that during marriage credits exceeded debits to the balance of the debt successfully proved separate character to the extent of the balance on date of marriage. Of course, interest earned on a debt during marriage is community property.

s. Professional Practice

The earnings from a married professional's practice are community property. *Hopf v. Hopf*, 841 S.W.2d 898, 900 (Tex. App.--Houston [14th Dist.] 1992, no writ) (CPA's practice).

t. Incorporating a Going Business

A spouse who incorporates an ongoing business cannot argue that inception of title in the corporation arose with the unincorporated business. *Allen v. Allen*, 704 S.W.2d 600, 604 (Tex. App.--Fort Worth 1986, no writ). A corporation comes into existence when the Secretary of State issues a certificate of incorporation. The character of the stock depends upon the consideration furnished to the corporation in exchange for the stock (i.e., the character of the assets contributed during the formation of the corporation).

u. Partnership

A partnership is an entity separate and apart from the partners. A partnership interest can be community property, but specific assets of the partnership cannot be community property, they are property of the partnership not the partners. The court in a divorce cannot award a community property partnership interest to the non-partner spouse. *McKnight v. McKnight*, 543 S.W.2d 863, 868 (Tex. 1976).

Amendment of Partnership Agreement During Marriage - The fact that the partners amend the partnership agreement during marriage does not establish that an interest in the partnership was acquired during marriage and is thus community property. Unless the partnership dissolved, the same partnership interest continues through the amendment. See *Harris v. Harris*, 765 S.W.2d 798, 803 (Tex. App.--Houston [14th Dist.] 1989, writ denied).

Profits Distributed From Partnership - Partnership profits and surplus received by a partner during marriage is community property, regardless of whether the partnership interest is separate or community property. *Harris v. Harris*, 765 S.W.2d 798, 804 (Tex. App.--Houston [14th Dist.] 1989, writ denied); *Marshall v. Marshall*, 735 S.W.2d 587, 594 (Tex. App.--Dallas 1987, writ ref'd n.r.e.).

v. Transactions Involving Corporate Stock

Stock Splits - Shares of stock acquired through stock splits have the same character as the original stock. *Harris v. Harris*, 765 S.W.2d 798, 803 (Tex. App.--Houston [14th Dist.] 1989, writ denied); *Horlock v. Horlock*, 533 S.W.2d 52 (Tex. Civ. App.--Houston [14th Dist.] 1975, writ dism'd).

w. Tort Recovery for Injuries Prior to Marriage

Recovery for a personal injury claim that arose prior to marriage would be the injured spouse's separate property, under Tex. Fam. Code § 3.001(1).

x. Tort Recovery for Injuries During Marriage

Physical Pain and Mental Anguish (Past & Future) - Under *Graham v. Franco*, 488 S.W.2d 390 (Tex. 1972), and § 3.001 of the Tex. Fam. Code, a recovery for physical pain and mental anguish is separate property.

Loss of Consortium - A spouse's recovery for loss of consortium (i.e., loss of the other spouse's affection, solace, comfort, companionship, society, assistance, and sexual relations necessary to a successful marriage) is the recovering spouse's separate property. *Whittlesey v. Miller*, 572 S.W.2d 665, 666 & 669 (Tex. 1978).

Loss of Services - A recovery for loss of the other spouse's services (i.e., performance of household and domestic duties) is community property. *Whittlesey v. Miller*, 572 S.W.2d 665, 666 n. 2 (Tex. 1978).

Lost Earning Capacity - A recovery for lost earning capacity during marriage is community property, and a recovery for lost earning capacity before marriage or after divorce is separate property.

Disfigurement (Past & Future) - Under the reasoning of *Graham v. Franco*, and § 3.001 of the Tex. Fam. Code, a recovery for disfigurement is separate property.

Physical Impairment (Past & Future) - Under the reasoning of *Graham v. Franco*, and § 3.001 of the Tex. Fam. Code, a recovery for physical impairment, past and future, is separate property.

Medical Expenses (Past & Future) - A recovery for medical expenses incurred during marriage is community property to the extent that the community estate has incurred liability for such expenses. *Graham v. Franco*, 488 S.W.2d at 396.

Exemplary Damages - The Texas Supreme Court has held that a recovery of exemplary damages by a spouse for a wrong committed during marriage is community property. *Rosenbaum v. Texas Building & Mortgage Co.*, 140 Tex. 325, 167 S.W.2d 506, 508 (1943).

Injury to Child - Any recovery for loss of earnings or earning capacity of a child during minority belongs to the parents. Tex. Fam. Code Ann. § 151.001(5) (Vernon Supp. 2005); *Bolling v. Rodriguez*, 212 S.W.2d 838, 841-42 (Tex. Civ. App.--Galveston 1948, writ ref'd n.r.e.).

y. **Community Property Held by Spouses With Right of Survivorship**

Tex. Const. art. XVI, § 15, and Tex. Prob. Code Ann. § 451 (Vernon Supp. 2005) 2005) permits spouses to hold community property with a right to survivorship in the the surviving spouse. *See*, Tex. Rev. Civ. Stat. Ann. art. 852a, § 6.09 (Savings and and Loan Act provision permitting spouses to have survivorship accounts at savings savings and loan institutions). The Constitution provides that the spouses "may agree agree in writing." The Probate Code provides that an agreement between spouses creating a right of survivorship in community property "must be in writing and signed

signed by both spouses." Tex. Prob. Code § 452. Upon death, the transfer to the surviving spouse occurs as a result of the agreement, and is not considered to be a testamentary transfer. *Id.* at § 454.

5. Tracing

Property possessed by either spouse during or on dissolution of marriage is presumed to be community property. Family Code § 3.003(a)

To overcome the statutory presumption of community property, the spouse claiming that certain property is separate must prove that characterization by clear and convincing evidence. Family Code § 3.003(b); *Stavinoha v. Stavinoha*, 126 S.W.3d 604 (Tex. App. Houston 2004)

The character of separate property is not changed by the sale, exchange, or change in form of the separate property. If separate property can be definitely traced and identified, it remains separate property regardless of the fact that the separate property undergoes mutations or changes in form. To overcome the presumption of community, the party asserting separate property must trace and clearly identify the property which he or she claims to be separate. *McKinley v. McKinley*, 496 S.W.2d 540, 543 (Tex. 1973); *Tarver v. Tarver*, 394 S.W.2d 780, 783 (Tex. 1965).

The court in *Faram v. Gervitz-Faram*, 895 S.W.2d 839, 842 (Tex. App.--Fort Worth 1995, no writ) [1995 WL 108637], described tracing in the following way:

[T]he party claiming separate property must trace and identify the property claimed as separate property by clear and convincing evidence. Tracing involves establishing the separate origin of the property through evidence showing the time and means by which the spouse originally obtained possession of the property. *Hilliard v. Hilliard*, 725 S.W.2d 722, 723 (Tex. App.--Dallas 1985, no writ). Separate property will retain its character through a series of exchanges so long as the PARTY Asserting separate ownership can overcome the presumption of community property by tracing the assets on hand during the marriage back to property that, because of its time and manner of acquisition, is separate in character. *Cockerham v. Cockerham*, 527 S.W.2d 162, 167 (Tex. 1975).

Tracing involves establishing the separate property origin of the property through evidence showing the time and means by which the spouse originally obtained possession of the property. *Celso v. Celso*, 864 S.W.2d 652, 654 (Tex. App.--Tyler 1993, no writ). The Court said "[s]eparate property will retain its character through a series of exchanges so long as the PARTY Asserting separate ownership can overcome the presumption of community property by tracing the assets on hand during the marriage back to property that,

that, because of its time and manner of acquisition, is separate in character"). See *Martin v. Martin*, 759 S.W.2d 463, 466 (Tex. App.--Houston [1st Dist.] 1988, no writ).

a. Methods of Tracing

i. Showing Only Separate Funds in Account

In *Padon v. Padon*, 670 S.W.2d 354 (Tex. App.--San Antonio 1984, no writ), the husband successfully traced separate property funds into the parties' home. The parties agreed that husband received \$160,000.00 by way of inheritance which he deposited into an account in the name of husband and wife. The parties further agreed that they acquired a home in "early 1977," for \$89,900.00. The March bank statement showed an initial deposit of \$160,490.00 on February 25, 1977. The statement reflected no further deposits into the account until March 4, 1977. However, the statement reflects that a check for \$89,900.00 cleared the account on March 1, 1977. The appellate court held that the husband had established that the house was his separate property, as a matter of law.

ii. Separate Funds Out First

In *McKinley v. McKinley*, 496 S.W.2d 540 (Tex. 1973), the Supreme Court ruled on the tracing of funds in bank accounts. The husband had \$9,500.00 of separate property money on deposit in a savings and loan account. By year end, it had earned \$472.03 in interest. On January 5, the husband withdrew \$472.03. The Supreme Court said that "the \$9,500.00 originally deposited remained in the account and continued to earn interest, until on December 31 of the following year [1967], the account balance was \$10,453.81. There were no withdrawals after the one mentioned above. All deposits were deposits of interest. On January 2 of 1968, \$10,400.00 was withdrawn and used to purchase a CD. The Supreme Court concluded that the \$9,500.00 originally on deposit had been "traced in its entirety" into the CD. Thus, \$9,500.00 of the \$10,400.00 CD was separate property. No explanation is given as to why all of the separate was deemed withdrawn from the savings account to purchase the CD before the \$953.81 in community funds were tapped. It appears that separate came out first.

iii. Community Funds Out First

In *Sibley v. Sibley*, 286 S.W.2d 657 (Tex. Civ. App.--Dallas 1955, writ dismiss'd) (per curiam), the husband mixed community funds in a bank account with \$3,566.68 of wife's separate funds. There were a number of

deposits and withdrawals to the account. However, the account never dropped below \$3,566.68. Seeing the husband as a trustee of the wife's separate property funds that were in his care, the appellate court invoked a rule of trust law, that where a trustee mixes his own funds with trust funds the trustee is presumed to have withdrawn his own money first, leaving the beneficiary's on hand. Since the husband owned none of wife's separate funds, funds, and half of the community funds, it was presumed that the community community moneys in the bank account were withdrawn first, before the wife's separate moneys were withdrawn. When the account had a balance of \$4,009.46, the sum of \$1,929.08 was withdrawn to buy a farm. The appellate court held that all \$442.78 in community property came out, and the the rest of the withdrawal was separate property, making the farm 11% community property and 89% wife's separate property. See also *Farrow v. Farrow*, 238 S.W.2d 255 (Tex. Civ. App.--Austin 1957, no writ) (although (although husband commingled his separate, his wife's separate, and community funds, husband did not do so wrongfully, and the amounts of each each could be calculated, so that the trust principle that all mixed funds belong to the beneficiary did not apply). See *Trevino v. Trevino*, 555 S.W.2d S.W.2d 792, 798 (Tex. App.--Corpus Christi 1977, no writ) (where husband husband managed community estate, a trust relationship existed between him him and wife).

iv. Pro Rata Approach

An argument can be made that, where mixed funds are withdrawn from an account, the withdrawal should be pro rata in proportion to the respective balances of separate and community funds in the account. A pro rata rule was used to achieve equity in an embezzlement case, *Marineau v. General American Life Ins. Co.*, 898 S.W.2d 397, 403 (Tex. App.--Fort Worth 1995, 1995, writ denied). The husband had embezzled \$349,077.32 from his employer and put it into an account where deposits totaled \$512,594.32. Husband purchased a life insurance policy, which he paid incrementally out out of the account. He later committed suicide, and the employer and the widow litigated who owned the policy proceeds. It was the employer's burden to trace its money into a specific asset. Having done that, the burden burden shifted to the widow (claiming through the wrongdoer) to prove what what funds of the wrongdoer flowed into the asset. The employer claimed claimed that the wrongdoer had to show the proportion of each type of funds funds in each payment, failing which the entire payment would be deemed to to belong to the employer. The appellate court rejected this contention, relying on an Oklahoma Supreme Court case to hold that each party was entitled to a pro rata share of each payment, in the same proportion as total embezzled deposits bore to total deposits of husband's money. Thus, a sort of

sort of global average was used, as opposed to trying to calculate the respective components of each premium payment, in contradistinction to the the tracing approach of some family law cases that analyze the character of each withdrawal.

v. **"Borrowing" Between Separate and Community Funds**

In *Newland v. Newland*, 529 S.W.2d 105 (Tex. Civ. App.--Fort Worth 1975, no writ), the husband maintained distinct bank accounts, the "general account" being for community deposits and expenditures, and the "separate account" being for business transactions relating to his separate estate. On occasion the balance of one account would run low, and Mr. Newland would "borrow" from the other account, for "short terms." The husband treated such transactions as loans, and repaid the borrowed funds "so that the two accounts were restored to the condition which would have obtained had there not been necessity for any transfer." There was documentary proof of this type of activity for most of the 20-year plus period involved. The trial court, and the appellate court, found that the husband's methods avoided commingling of the funds, since "there was always ability to compute correct balances for purposes of resegregation."

vi. **Clearing-house method - Deposit Followed by Withdrawal in Close Proximity**

In *Higgins v. Higgins*, 458 S.W.2d 498 (Tex. Civ. App.-- Eastland 1970, no writ), the jury found that where the husband deposited \$71,200.00 of separate funds in a joint bank account and shortly thereafter drew out \$70,000.00 to purchase a ranch, the ranch was the husband's separate property. That finding was affirmed by the appellate court. In *Beeler v. Beeler*, 363 S.W.2d 305 (Tex. Civ. App.--Beaumont 1962, writ dism'd), the spouses purchased real property, partly with a separate property down payment made by the husband, and partly with a community loan. The collateral for the loan was a separate property promissory note of the husband. Payments on the community loan were made to coincide with payments received by the husband on the separate property note, in time and amount. During the marriage, the husband deposited his separate property note payments into a joint account, then wrote checks to make the payments on the community note. Husband sought reimbursement for his separate funds used to pay a community debt. Wife opposed the reimbursement claim, saying that the payments from the separate property note were commingled when they were deposited into the bank account. The The trial court found, however, that the parties had agreed to pay the new note with the proceeds from the old note, and that "it was not the intention of

of the parties to commingle such funds with the community funds of the parties." The appellate court found that the momentary deposit of such funds into a joint bank account did not convert "the \$2,500.00, plus interest" into community funds. "Such sum, in each instance, was, in effect, earmarked a trust fund, in equity already belonging to the bank from the moment collected by appellee This being so, the installments paid upon the bank note were paid from the separate funds of appellee and his separate estate is therefore entitled to reimbursement therefor."

II. Why Bother With a Pre-marital or Post-Marital Agreement

A. Divorce

1. Division of Marital Estate

The court ordering the divorce must make a "just and right" division of the estate of the parties. Tex. Fam. Code §7.001. Only the community property of the parties is divided. Tex. Fam. Code §7.002(a); *Wilson v. Wilson*, 44 S.W.3d 597 (Tex. App. Fort Worth 2001). Each spouse is awarded his or her separate property. Tex. Fam. Code § 7.002(b).

A pre-marital or post-marital agreement can override the normal statutory rules which would classify property as community.

2. Alimony (Spousal Maintenance)

Texas courts may, in the context of a divorce proceeding, order that spousal maintenance be paid by one spouse to the other spouse. Chapter 8, Tex. Fam. Code. The specific entitlement to spousal maintenance depends on a variety of factors, including the duration of the marriage. Tex. Fam. Code § 8.051. The specific amount of spousal maintenance varies both in duration and amount. Tex. Fam. Code § 8.054 and § 8.055.

A pre-marital agreement can override the normal spousal maintenance rules. Tex. Fam. Code § 4.003.

B. Death

1. Homestead Rights of Surviving Spouse

Article 16, Section 52 of the Texas Constitution grants a surviving spouse potentially a life life estate in the homestead: "it shall not be partitioned among the heirs of the deceased

during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead....” *See also*, Texas Probate Code § 284.

2. Tax Issues

a. Basis Adjustment

Internal Revenue Code (“IRC”) §1014(a) provides that upon death the income tax basis of the decedent’s property is adjusted to the fair market value of the property on the date of death (or alternate valuation date if elected). This basis “step-up” has the consequence of reducing future capital gain when the property is sold. In the case of married persons, the community property interest of the surviving spouse is also treated as having been acquired from a decedent and receives a basis step up. IRC § 1014(b)(6).

b. Gift Tax Opportunities

IRC § 2503(b) permits an individual to exclude from gift tax gifts to an individual (or properly constructed trust) in the annual amount of \$13,000 (increases to \$14,000 on January 1, 2013). IRC § 2513 permits spouses to elect that a gift may be treated as being a gift from spouses even if the gift is made from the separate property of only one spouse (*i.e.*, a “split gift”). The parties to a premarital agreement may provide the each party will cooperate with the other in making split gifts from one party’s separate property.

C. Control of Homestead and Other Property While Married

Tex. Fam. Code § 5.001 provides that the joinder of both spouses is required to “sell, convey, or encumber the homestead” regardless whether it is community property or separate property. Tex. Fam. Code § 4.003(a)(2) permits parties to contract in a premarital agreement with respect to “the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber or dispose of, or otherwise manage and control property.”

D. Creditors

A spouse’s separate property is not subject to the liabilities of the other spouse unless both spouses are liable under other rules of law. Tex. Fam. Code §3.202(a). However, community property may, under certain circumstances, be subject to the liabilities of either spouse. Tex. Fam. Code § 3.202.

E. Promote Family Harmony

Concern may exist among children from prior marriages when their parent is about to marry – particularly in later life. A well reasoned premarital agreement may help quell apprehension among the children that their “inheritance” is being put at risk by new spouse.

III. Changing the Rules of the Game

A. Texas Constitution – Article XVI

Section 15 of Article XVI of the Texas Constitution provides the constitutional underpinning of premarital and post-marital property agreements.

“Sec. 15. SEPARATE AND COMMUNITY PROPERTY. All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that **persons about to marry and spouses**, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; **spouses** also may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned or which thereafter might be acquired by only one of them, shall be the separate property of that spouse; if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from that gift of property; spouses may agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse; and **spouses may agree in writing that all or part of the separate property owned by either or both of them shall be the spouses' community property.** (*emphasis added*)

B. Texas Premarital Agreements – Texas Family Code

1. **General.** Tex. Fam. Code § 4.001 *et seq.*, embodies the Texas version of the Uniform Premarital Agreement Act. The provisions enable spouses to enter into a written agreement concerning among other things:

- a. Rights and obligations of the parties;
- b. Ownership, management, disposition and control of property;
- c. Partition and exchange of property including providing that income from separate property shall be characterized as separate property;
- d. Spousal support issues;
- e. Disposition of property in the event of divorce.

C. Post Marital Agreements – Texas Family Code

1. General. Tex. Fam. Code § 4.101 *et seq.*, contains the statutory provisions for post-marital agreements. Section 4.102 provides:

“At any time, the spouses may partition or exchange between themselves all or part of their community property, then existing or to be acquired, as the spouses may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes that spouse's separate property. The partition or exchange of property may also provide that future earnings and income arising from the transferred property shall be the separate property of the owning spouse.”

D. Enforceability of Premarital and Post-Marital Agreements

Tex. Fam. Code § 4.003 (premarital agreements) and 4.105 (post-marital agreements) contain mirror image provisions concerning the requirements for enforceability of marital property agreements:

1. The agreement is not enforceable if the party against whom enforcement is requested proves that:
 - a. the party did not sign the agreement voluntarily; or
 - b. the agreement was unconscionable when it was signed and before execution of the agreement, that party:
 - (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
 - (ii) 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; and

(iii) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.

c. an issue of unconscionability of shall be decided by the court as a matter of law.

E. Agreement Must be in Writing / No Consideration Required

Tex. Fam. Code §§ 4.002 and 4.104 require that premarital agreements and post-marital agreements be in writing, signed by both parties. Both agreements are enforceable without consideration.

IV. The Lawyers

A. Must Both Parties be Represented by Separate Counsel?

The short answer is no. But the old adage that one who represents himself has a fool for a client is certainly food for thought. Moreover, if one party is unrepresented, traps are created for the attorney representing the other party and the risk of future challenge to the agreement increases with respect to voluntariness of the agreement and fair and reasonable disclosure.

1. Key Ethical Rules

a. Rule 4.03

Tex. Disciplinary R. Prof'l Conduct ("Rule") 4.03 requires that lawyers dealing with persons who are not lawyers must not state or imply that the lawyer is disinterested. The lawyer may not provide counsel to the other party other than a recommendation that the person seek their own counsel.

b. Rule 1.06

Rule 1.06(a) provides that a lawyer shall not represent opposing parties to the same litigation. There are exceptions to this rule contained in Rule 1.06(b) and (c), but attempting to qualify for the exceptions are at best risky.

V. Common Provisions in Marital Agreements

A. Premarital Agreements

1. Confirming Status as not Married

Inasmuch as common-law marriages have long been recognized in Texas, *see discussion supra*, including a recitation in the premarital agreement that the parties are not married and have never intended to be married prior to the date of the marriage contemplated in the premarital agreement provides evidence of unmarried status. Such evidence negates the current existence of any community property and could be a shield against claims for support if the marriage contemplated in the premarital agreement does not occur.

2. Identify Existing Separate Property, Trusts and Liabilities

Disclosing and describing existing separate property, trusts and liabilities establishes the parties rights in these things and creates the foundation for provisions dealing with such items.

3. Specify the Parties Intention with Respect to Income from Separate Property

As noted previously, absent a premarital agreement provision to the contrary, income from separate property is classified as community property income. Similarly, income from a separate property trust can be classified as community property income. A provision providing that income from separate property and separate property trusts is to be classified as the separate property of the party receiving such income can avoid commingling issues.

4. Partition Future Property and Income

Article XVI, Section 15 of the Texas Constitution permits spouses and parties about to marry to partition future property and permits spouses to partition future income. This is a key provision if the parties intend to have a “no community property” marriage. Note that Section 15 of Article XVI limits the ability to partition income to spouses. However, it is common for premarital agreement to contain a provision that future income shall be treated as separate property of the spouse earning such income and a post-marriage ratification of the premarital agreement should solve any issues.

5. Waiver of Support if Marriage Fails

Tex. Fam. Code § 4.003(a)(1) and (4) permits the parties to a premarital agreement to modify or eliminate spousal support.

6. Waiver of Alimony if Marriage Fails

Tex. Fam. Code § 4.003(a)(1) and (4) permits the parties to a premarital agreement to modify or eliminate spousal support.

7. Tax Return Status

The Internal Revenue Code permits married taxpayers to either file joint income tax returns or separate income tax returns. Although, often a joint return will yield lower overall tax as compared to two separate tax returns, it is common to provide in premarital agreements that the parties will file separate tax returns unless both agree to file a joint return. Such a provision also typically contains indemnification language and allocation of liability language.

8. Split Gifts

The Internal Revenue Code allows married taxpayers to elect to treat a gift as being made by both spouses even if the gifted property is the separate property of only one spouse. This split-gift election is often beneficial in that one spouse with children from a prior marriage can use his spouse's annual exclusion exemption for the gift thereby doubling the gift. Care must be taken in the case of gifts of hard to value property where the amount of the gift exceeds the annual exclusion amount (currently \$13,000) not to exceed the exclusion amount or the non-donor spouse's unified credit amount will be eroded.

9. Waiving Rights in Retirement Plans

Both the Internal Revenue Code (Section 417(a)) and ERISA (29 U.S.C. § 1055(c)) grant certain rights to the spouse of a plan participant. However, such rights may be waived by the spouse in a notarized writing which designates a beneficiary and which writing acknowledges the effect of the waiver. A waiver in a premarital agreement is not effective inasmuch as the party is not yet a "spouse." It is not clear that a ratification of the premarital will cure the problem. However, a provision in the premarital agreement which obligates the prospective spouse to waive such rights can provide the catalyst to get the formal waiver signed after marriage.

10. Waiver of Homestead Rights

Article 16, Section 52 of the Texas Constitution grants a surviving spouse potentially a life estate in the homestead: "it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead...." *See also*, Texas Probate Code § 284.

A pre-marital agreement can override these homestead rights. *Beck v. Beck*, 814 S.W.2d 745 (Tex. 1991); *Williams v. Williams*, 569 S.W.2d 867 (Tex. 1978).

11. Waiver of Reimbursement

Tex. Fam. Code § 3.402a) provides for reimbursement of the following:

1. payment by one marital estate of the unsecured liabilities of another marital estate;
2. inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse;
3. the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage;
4. the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed at the time the property was received;
5. the reduction of the principal amount of that part of a debt, including a home equity loan:
 - (A) incurred during a marriage;
 - (B) secured by a lien on property; and
 - (C) incurred for the acquisition of, or for capital improvements to, property;
6. the reduction of the principal amount of that part of a debt:
 - (A) incurred during a marriage;
 - (B) secured by a lien on property owned by a spouse;
 - (C) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and
 - (D) incurred for the acquisition of, or for capital improvements to, property;

7. the refinancing of the principal amount described by Subdivisions (3)-(6), to the extent the refinancing reduces that principal amount in a manner described by the applicable subdivision;
8. capital improvements to property other than by incurring debt; and
9. the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses.

The court resolves claims for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate, except that the separate estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate.

Reimbursement for funds expended by a marital estate for improvements to another marital estate shall be measured by the enhancement in value to the benefited marital estate.

The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset.

12. Choice of Law / Venue

Tex. Fam. Code § 4.003(a)(7) permits the parties to contract with respect to the choice of law governing construction of the agreement. Tex. Fam. Code § 4.003(a)(8) permits the parties to contract with respect to any other matter, including their rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

It is common to have marital agreements specify Texas as the choice of law (particularly if one of the parties does not reside in Texas) and specify venue for any dispute in Dallas County.

B. Post-Marital Agreements

1. Confirming Marital Status

The provisions of Tex. Fam. Code § 4.101, *et seq.*, are applicable only to spouses. Hence, the agreement should specify that the parties are married.

2. Partition of Property and Income

Tex. Fam. Code § 4.102 provides that spouses may partition or exchange between themselves then existing or to be acquired community property, such partitioned property becoming the separate property of the specified spouse. It also expressly provides the statutory authority that future income and earnings may be partitioned as the separate property of the owning spouse. Tex. Fam. Code § 4.103 provides that the spouses may agree that income from separate property shall be the separate property of the owner spouse.

The partitioning of property and / or income are the common major provisions of post-marital agreements.

VI. Attacking and Defending Premarital and Post-Marital Agreements

A. Forgery and Lost Documents

1. Forgery

In the recent local case of *Sanders v. Sanders*, attorneys for Pilar Sanders, wife of Deion Sanders, contended that the parties premarital agreement was a forgery. According to the Dallas Morning News, October 24, 2012, Mrs. Sanders' attorney contended that two pages in the document proffered as part of the premarital agreement were forged. Mrs. Sanders' attorney produced testimony from handwriting expert Dennis Cox that he was "virtually certain" that Pilar did not "author" the signatures in question – *i.e.*, initials at the bottom of the two pages in question.

Mr. Sanders' successfully rebutted the forgery contention. A paralegal from Koons Fuller, Deion Sanders legal team testified that in 1999, Pilar Sanders neglected to initial some of the spaces on the document during the execution of the premarital agreement, that the paralegal corrected Pilar and asked her to sign the blanks and Pilar used a different pen, with different colored ink to sign those spaces she had overlooked.

The moral of the story is that care must be taken during the execution process. Even seemingly minor discrepancies can lead to major legal battles.

2. Lost Documents

Tex. Fam. Code §§ 4.002 and 4.104 require that marital agreement be in writing. Can anything be done to salvage the situation where the premarital agreement has been lost? The answer is perhaps.

The admission of parol evidence is committed to a trial court's sound discretion. *See Gee v. Liberty Liberty Mut. Fire Ins. Co.*, 765 S.W.2d 394, 396 (Tex. 1989). Tex. R. Evid. 1002 is commonly referred to as the Best Evidence Rule and generally precludes admission of parol evidence to prove

prove the contents of a document. *See Mega Child Care, Inc. v. Tex. Dep't of Protective & Regulatory Servs.*, 29 S.W.3d 303, 311 (Tex. App.- Houston [14th Dist] 2000, no pet.). However, Tex. R. Evid. 1004 provides an exception of when the admission of parol evidence is proper to prove the contents of a document.

“When a written, signed contract is lost or destroyed such that the party seeking to prove or enforce the agreement is unable to produce the written agreement in court, the existence and terms of the written contract may be shown by clear and convincing parol evidence.” *Bank of Am., N.A. v. Haag*, 37 S.W.3d 55, 58 (Tex. App.—San Antonio 2001, no pet.). Texas courts have long applied this rule to a variety of contracts governed by the statute of frauds, including: (1) an account agreement at a financial institution, *id.*; (2) a contract for the sale of an interest in real property, *EP Operating Co. v. MJC Energy Co.*, 883 S.W.2d 263, 267 n.1 (Tex. App.—Corpus Christi 1994, writ denied); (3) a contract for the purchase of a good for over \$500, *Lemus v. CMH Homes, Inc.*, 798 F. Supp. 2d 853, 861 (S.D. Tex. 2011) (applying Texas law); and (4) a will or testamentary trust, *In re Estate of Berger*, 174 S.W.3d 845, 847, 848 (Tex. App.—Waco 2005, no pet.).

Texas courts have previously applied Rule 1004 in connection with premarital agreements. In *Jurek v. Couch-Jurek*, 296 S.W.3d 864 (Tex. App.—El Paso 2009), the parties entered into a premarital agreement prior to the marriage. *Id.* at 867. Wife filed for divorce, but at the time of trial, no premarital agreement could be produced, and Husband denied ever having signed one. *Id.* During trial, Wife introduced parol evidence of oral testimony and documentary evidence to prove the existence of the premarital agreement. *Id.* at 868. Wife’s testimony was supported by the fact that throughout the marriage the parties behaved in a manner consistent with the existence of a premarital agreement, such as filing separate tax returns and maintaining separate bank accounts. Husband objected to the admission of parol evidence based on Tex. R. Evid. 1004(e), but not under any other provision of Rule 1004. *Id.* at 869-70. The Court overruled the objection and properly admitted the parol evidence because the court found that the original premarital agreement was lost and the loss was not the result of any action by Wife. As such, Wife was excused from producing the original document under the Best Evidence Rule. Based on the evidence, the trial court concluded and the court of appeals affirmed that there was a valid premarital agreement, and the parties acted in a course of conduct, throughout their marriage, that supported its execution and existence. *See also, Coke v. Coke*, 802 S.W.2d 270, 275 (Tex. App.—Dallas 1990, writ denied), where the Dallas Court of Appeals held that parol evidence was admissible when the original child support order was lost.

B. Was the Agreement Entered Into Voluntarily?

Tex. Fam. Code §§ 4.006(a)(1) and 4.105(a)(1) require that the party contesting any premarital or post-marital agreement must prove that the contesting party did not “sign the agreement voluntarily.”

It is the public policy of Texas that marital agreement be enforced and they are presumptively enforceable. As noted by the Texas Court of Appeals (Beaumont) in *Thurlow v. Thurlow*, 09-06-522CV, 2007 WL 5760841:

“All property acquired by either spouse during the marriage belongs to the marital estate, with the exception of property acquired by gift, devise, or descent. Tex. Const. art. XVI, § 15; Tex. Fam.Code Ann. § 3.002 (Vernon 2006); see also *Free v. Bland*, 369 U.S. 663, 664 n. 1, 82 S.Ct. 1089, 8 L.Ed.2d 180 (1962). However, the Texas Constitution explicitly recognizes the right of couples to enter into premarital or marital agreements, the purpose of which is to alter the classification of spousal or community property. Tex. Const. art. XVI, § 15. Chapter 4 of the Texas Family Code also explicitly provides for such agreements. See Tex. Fam.Code Ann. §§ 4.001-206 (Vernon 2006). Indeed, the legislature and the people have made it public policy in Texas that premarital and marital agreements should be enforced. See *Beck v. Beck*, 814 S.W.2d 745, 749 (Tex.1991); *Sheshunoff v. Sheshunoff*, 172 S.W.3d 686, 694 (Tex.App.-Austin 2005, pet. denied). As a result, agreements entered into between parties before and during marriage are presumptively enforceable. See *Sheshunoff*, 172 S.W.3d at 694; *Grossman v. Grossman*, 799 S.W.2d 511, 513 (Tex.App.-Corpus Christi 1990, no writ).”

Voluntarily, is not defined in the Texas Family Code. In *Martin v. Martin*, 287 S.W.3rd 260 (Tex. App. – Dallas 2009, pet denied), the Dallas Court of Appeals recently articulated the following standard:

“A marital property agreement is not enforceable if the party against whom enforcement is sought proves she did not sign the agreement voluntarily. TEX. FAM.CODE ANN. § 4.105. The statute does not define “voluntarily,” and Texas courts have generally construed it to mean an action that is taken intentionally or by the free exercise of one’s will. See *Sheshunoff v. Sheshunoff*, 172 S.W.3d 686, 696 (Tex.App.-Austin 2005, pet. denied); see also *Cooper v. Cochran*, 288 S.W.3d 522, 533 (Tex.App.-Dallas 2009, no pet. h.) (describing duress and undue influence as causing a party to do something she would not otherwise have done); *Matelski v. Matelski*, 840 S.W.2d 124, 128–29 (Tex.App.-Fort Worth 1992, no writ) (equating duress with involuntary). Generally, whether a party executed an agreement voluntarily or as the result of a state of duress or coercion is a question of fact dependent upon all the circumstances and the mental effect on the party claiming involuntary execution. *Matthews v. Matthews*, 725 S.W.2d 275, 278–79 (Tex.App.-Houston [1st Dist.] 1986, writ ref’d n.r.e.); *Sanders v. Republic Nat’l Bank of Dallas*, 389 S.W.2d 551, 554 (Tex.Civ.App.-Tyler 1965, no writ)”.

As explained in *Martin*, undue influence and duress are both questions of fact. For an extensive discussion of the issue, see, Kinser, Pre and Post-Marital Agreements, State Bar of Texas 34th Annual Marriage Dissolution Institute, 2011 (“Kinser”).

C. Was the Agreement Unconscionable When Signed?

Tex. Fam. Code §§ 4.006(a)(2) and 4.105(a)(2) require that the party contesting any premarital or post-marital agreement must prove that:

“2. the agreement was unconscionable when it was signed **and** before execution of the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) 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; and

(C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.”

Whether the agreement is unconscionable is a matter of law. Tex. Fam. Code §§ 4.006(c) and 4.105(c). As is the case for “voluntariness,” the statute does not define “unconscionable.”

In *Marsh v. Marsh*, 949 S.W. 2nd 734, 741 – 742 (Tex. App. – Houston 1997), the Court of Appeals articulated the following standard for “unconscionability”:

“However, neither the legislature nor Texas courts have defined “unconscionable” in the context of marital or premarital property agreements. Instead, Texas courts have addressed the issue of unconscionability on a case-by-case basis, looking to the entire atmosphere in which the agreement was made. *Pearce v. Pearce*, 824 S.W.2d 195, 199 (Tex.App.—El Paso 1991, writ denied). In the absence of clear guidance as to the definition of “unconscionability” in marital property cases, courts have turned to the commercial context. For example, the following general discussion of unconscionability, taken from a case involving a suit on a real estate listing agreement, is sometimes cited:

In determining whether a contract is unconscionable or not, the court must look to the entire atmosphere in which the agreement was made, the alternatives, if any, which were available to the parties at the time of the making of the contract; the non-bargaining

non-bargaining ability of one party; whether the contract is illegal or or against public policy, and, whether the contract is oppressive or unreasonable. At the same time, a party who knowingly enters a lawful but improvident contract is not entitled to protection by the courts. In the absence of any mistake, fraud, or oppression, the courts, courts, as such, are not interested in the wisdom or impolicy of contracts and agreements voluntarily entered into between parties compos mentis and sui juris. Such parties to contracts have the right right to insert any stipulations that may be agreed to, provided they are neither unconscionable nor otherwise illegal or contrary to public public policy. It has accordingly been said that, almost without limitation, what the parties agree upon is valid, the parties are bound bound by the agreement they have made, and the fact that a bargain is is a hard one does not entitle a party to be relieved therefrom if he assumed it fairly and voluntarily. A contract is not unenforceable on on the ground that it yields a return disproportionate to the expenditures in time and money, where there has been no mistake or or unfairness and the party against whom it is sought to be enforced enforced has received and enjoyed the benefits. *Wade v. Austin*, 524 524 S.W.2d 79, 86 (Tex.Civ.App.—Texarkana 1975, no writ) (citation omitted).”

In affirming the trial court’s rejection of the attack on the premarital agreement, the Marsh court at 741 noted the following factors:

In reviewing the validity of a marital property agreement, this court has considered such factors as the maturity of the individuals, their business backgrounds, their educational levels, their experiences in prior marriages, their respective ages and their motivations to protect their respective children. See *Williams v. Williams*, 720 S.W.2d 246, 249 (Tex.App.—Houston [14th Dist.] 1986, no writ). Bill argues, however, that he established the following factors which make the agreement in this case unconscionable:

- (1) the onerous circumstances of its execution, including:
 - (a) the parties' disparate bargaining power;
 - (b) the agreement's proximity in time to the marriage;
 - (c) the absence of counsel representing Bill's interests;
- (2) the oppressive, one-sided nature of the agreement; and
- (3) the failure of the agreement to effect the parties' intent.

Our review of the entire record does not reveal that the evidence overwhelmingly established these factors. We disagree that the parties had disparate bargaining power. Both were mature, educated, and had business experience. Juanita had grown children to consider, and Bill was childless. Both Bill and Juanita had been married before, and Juanita had seen her assets diminished through the lengthy illness of her late husband. Only Juanita had previously executed a premarital agreement, however.

As noted in the quote above: “[W]hat the parties agree upon is valid and are bound by the agreement they have made, and **the fact that a bargain is a hard one does not entitle a party to be relieved therefrom if he assumed it fairly and voluntarily.**”

In addition to proving “unconscionability,” the contesting party must also prove that **before executing the document**: (A) the contesting party was not provided a fair and reasonable disclosure of the properties and financial obligations of the other party; AND (B) the contesting party did not voluntarily and expressly waive in writing any right to disclosure beyond what was provided; AND (C) the contesting party did not, or reasonably could not have had adequate knowledge of the property or financial obligations of the other party.

Thus, either a fair and reasonable disclosure or a valid waiver of disclosure will defeat an unconscionability challenge.

D. Ratification of Premarital Agreement

"Ratification" of a contract is the adoption or confirmation of the agreement by a person, with knowledge of all material facts, of a prior act that did not then legally bind that person, and that the person had the right to repudiate. *Enserch Corp. v. Rebich*, 925 S.W.2d 75 (Tex. App. Tyler 1996), writ dismissed by agreement, (July 8, 1996). Actions or conduct that recognizes the existence of a contract, when all relevant facts are known, is a ratification of that contract. *Sun Operating Ltd. Partnership v. Oatman*, 911 S.W.2d 749 (Tex. App. San Antonio 1995), writ denied, (Feb. 9, 1996).

Premarital and post-marital agreements are enforceable contracts. Tex. Fam. Code §§ 4.001, 4.002, 4.104.

Ratification is an affirmative defense to a challenge to enforceability. See, *Marsh v. Marsh*, supra at 743, n. 7. In *Nesmith v. Berger*, 64 S.W.3d 110, 115 (Tex. Civ. App. – Austin 2001), the court of appeals found that “Nesmith faithfully ratified the agreement each year by performing according to its terms.”

E. Declaratory Judgment

The concept of *res judicata* precludes relitigation of claims that have been finally adjudicated, or that arise out of the same subject matter and could have been litigated in a prior action. *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644 (Tex. 1996).

After execution of the premarital agreement and before marriage, the parties can file a declaratory judgment action pursuant to Tex. Civ. Prac. & Rem. § 37.003 seeking to have the court determine that the premarital agreement is enforceable according to its terms.

This process entails a brief hearing at which the parties to the premarital agreement typically provide testimony concerning the following matters:

1. Residence of the parties to the premarital agreement, at least one of them being a resident of Dallas County;
2. The parties are not presently married;
3. On <date>, the parties executed a premarital agreement in Dallas, Texas;
4. The parties executed a waiver of disclosure of financial information before executing the premarital agreement;
5. The premarital agreement was negotiated and prepared in Texas;
6. Texas law will apply perpetually to the interpretation and enforcement of the premarital agreement;
7. This Court has jurisdiction over the parties and this subject matter;
8. The premarital agreement contains all the requisite terms and formalities required by Texas law to ensure enforceability;
9. The parties negotiated the premarital agreement voluntarily, and they voluntarily arrived at mutually satisfactory terms and provisions in the agreement;
10. Neither party is relying or acting on any representation, warranty, promise, or expectancy not expressly contained in the written premarital agreement;
11. The premarital agreement was neither unfair nor unconscionable when executed;
12. The parties were each provided a fair and reasonable disclosure of property, including its value, and financial obligations of the other party;

13. The further disclosure of the property, including its value, and financial obligations of the other party was waived voluntarily by each party to the full extent provided in the waiver of disclosure of financial information, a copy of which is attached to the judgment and incorporated in it;
14. Each party has adequate personal knowledge of the property, including its value, and the financial obligations of the other party;
15. The premarital agreement is fair in every respect between the parties and as to each party individually for all purposes present and future;
16. The premarital agreement is unambiguous and expresses fully and completely the intent and agreement of both parties;
17. Both parties acted voluntarily, willingly and freely in making the premarital agreement;
18. Neither party negotiated or executed the premarital agreement under duress, constraint, or compulsion of any kind whatsoever; and
19. The premarital agreement, on marriage, is fully enforceable.

Premarital Agreement

The parties to this Premarital Agreement are [**name of PROSPECTIVE HUSBAND**], a single man of [**city**], [**county**] County, Texas, and [**name of PROSPECTIVE WIFE**], a single woman of [**city**], [**county**] County, Texas.

Stipulations

1. [**Name of PROSPECTIVE HUSBAND**] and [**name of PROSPECTIVE WIFE**], who are not now married, intend to become husband and wife [**include if applicable**: by ceremony to be performed in [**city, state**]].

2. The parties are entering into this agreement in accordance with article XVI, section 15, of the Texas Constitution, as amended, and relevant sections of the Texas Family Code, altering by agreement what their marital property rights would be in certain property on and during their marriage and determining, in part, the claims each may lawfully assert against the other party and his or her estate, if and when the marriage is dissolved by judicial act or death. Section 3.001 of the Texas Family Code defines a spouse's separate property as the property owned or claimed by the spouse before marriage; the property acquired by the spouse during marriage by gift, devise, or descent; and the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage. Section 3.002 of the Texas Family Code defines community property as the property, other than separate property, acquired by either spouse during marriage. Texas law provides that income from separate property during the marriage is community property. A premarital agreement can and very often does make what would otherwise be community property instead be separate property.

3. The Texas Family Code provides that the parties to a premarital agreement may contract concerning any matter, including personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty and as long as the rights of a child to receive support are not adversely affected.

4. Each party presently owns real and/or personal property as described in Schedules A and B. Schedule A contains the property of [**name of PROSPECTIVE HUSBAND**], and Schedule B contains the property of [**name of PROSPECTIVE WIFE**]. The schedules are attached to this agreement and made a part of it for all purposes.

5. The parties, by entering into this agreement, are not attempting to prejudice the rights of preexisting creditors.

6. The parties do not intend by this agreement to make a gift from one party to the other other party, but rather to enter into an agreement that will control their marital property rights and other spousal rights in a manner that is in important respects different from the manner in which the

the separate and community property rights or spousal claims would arise by operation of law in the absence of this agreement.

7. The parties intend to clarify their respective property rights to eliminate any uncertainty about those rights.

8. **[Name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** intend by this agreement that no community property will be created during their marriage.

In consideration of the mutual love and respect between the parties; in consideration of the mutual promises, agreements, partitions, exchanges, conveyances, releases, waivers, and assignments contained in this agreement; in consideration of the parties' desire to establish rights and obligations by this agreement; and with the intent to be bound fully by the terms of this agreement, the parties covenant, agree, and contract as follows:

Article 1 Representations and Disclosures

1.1 No Oral Representations

Neither party is relying on any representations made by the other party about financial matters of any kind, other than the representations stated in this agreement and in any schedule or exhibit attached to it.

1.2 Disclosure

Each party represents and warrants to the other party that he or she has to the best of his or her ability, made to the other party a complete and accurate/fair and reasonable disclosure of the nature and extent of his or her property, including values, and financial obligations, contingent or otherwise, and that the disclosure includes but is not limited to the properties and liabilities set forth in Schedules A, B, C, and D attached to this agreement and other documentation exchanged between the parties before their signing of this agreement. Each party additionally acknowledges that, before the signing of this agreement, he or she has been provided a fair and reasonable disclosure of the other party's income, property, and financial obligations. Furthermore, and before their execution of this agreement, **[name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** have previously offered to provide, or have provided, to the other party all information and documentation pertaining to all income, all property and its value, and all financial obligations that have been requested by the other party. **[Name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** each acknowledge that he or she has, or reasonably could have had, full and complete knowledge of the property owned by the other party, as well as complete knowledge of all financial obligations of the other party.

Article 2 Children

2.1 *Children*

[Name of PROSPECTIVE HUSBAND] is the parent of [name], a [male/female] born on [date] in [city, state]. [Continue as applicable for other children.]

[Name of PROSPECTIVE WIFE] is the parent of [name], a [male/female] born on [date] in [city, state]. [Continue as applicable for other children.]

2.2 *Obligations to Other Party's Children*

Neither party intends to assume and, unless a contrary intent is indicated by appropriate adoption proceedings, neither party will assume by virtue of their marriage any responsibility or obligation now existing or accruing in the future with respect to the other party's child or children, as the case may be, natural or adopted. The parties specifically agree that neither party will be responsible for or be required to pay any expenses for education, including college, for the other party's child or children, as the case may be. Each party agrees to indemnify and hold the other party and his or her property harmless from the assertion of any such claim or obligation now or in the future, except that if either party voluntarily pays or advances any money for educational or other expenses of the other party's child, no obligation of indemnification or reimbursement will arise unless an explicit written understanding to indemnify or reimburse is executed contemporaneously with the payment or advance.

Article 3 Property of the Parties

3.1 *[No] Joint Ownership*

As of the date of this agreement, the parties do not jointly own, legally or equitably, any property or property rights, nor does any sort of partnership or joint venture, oral or written, exist between the parties.

At the time of their execution of this agreement, the parties jointly own certain property, which is reflected, along with each party's ownership interest, in the attached Schedule E.

3.2 *Separate Property of [name of PROSPECTIVE HUSBAND]*

[Name of PROSPECTIVE WIFE] agrees that the following will constitute the separate property of [name of PROSPECTIVE HUSBAND]:

1. all properties listed in Schedule A attached to this agreement;
2. all mutations, changes, and increases in kind or in value of [name of PROSPECTIVE HUSBAND]'s separate property;

3. all increases in kind or in value of **[name of PROSPECTIVE HUSBAND]**'s separate property resulting from the time, talent, labor, or personal efforts of either or both parties;

4. all income and revenues from **[name of PROSPECTIVE HUSBAND]**'s separate property, all income and property acquired as a result of **[name of PROSPECTIVE HUSBAND]**'s separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income;

5. all of **[name of PROSPECTIVE HUSBAND]**'s interest in or claim to any future profits of any partnership, joint venture, or corporation owned by **[name of PROSPECTIVE HUSBAND]** at the time of the parties' marriage or acquired by **[name of PROSPECTIVE HUSBAND]** following the marriage, whether the profits are distributed or undistributed;

6. all profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by **[name of PROSPECTIVE HUSBAND]** after the date of the parties' marriage, and all income and property derived from the reinvestment of **[name of PROSPECTIVE HUSBAND]**'s profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received during the marriage, together with all interest and dividend income received by **[name of PROSPECTIVE HUSBAND]** during the marriage;

7. all future contributions to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf of **[name of PROSPECTIVE HUSBAND]** after the date of the parties' marriage, together with all increases in value of all such plans;

8. all interests in any trust in which **[name of PROSPECTIVE HUSBAND]** has an interest, including but not limited to all corpus of those trusts, as well as all distributed and undistributed income from those trusts;

9. all recovery for personal injuries and/or property losses sustained by **[name of PROSPECTIVE HUSBAND]** during the parties' marriage, including any recovery for loss of earning capacity during the marriage; and

10. all property and property rights acquired by **[name of PROSPECTIVE HUSBAND]** by gift, devise, or descent.

3.3 *Separate Property of [name of PROSPECTIVE WIFE]*

[Name of PROSPECTIVE HUSBAND] agrees that the following will constitute the separate property of [name of PROSPECTIVE WIFE]:

1. all properties listed in Schedule B attached to this agreement;
2. all mutations, changes, and increases in kind or in value of [name of PROSPECTIVE WIFE]'s separate property;
3. all increases in kind or in value of [name of PROSPECTIVE WIFE]'s separate property resulting from the time, talent, labor, or personal efforts of either or both parties;
4. all income and revenues from [name of PROSPECTIVE WIFE]'s separate property, all income and property acquired as a result of [name of PROSPECTIVE WIFE]'s separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income;
5. all of [name of PROSPECTIVE WIFE]'s interest in or claim to any future profits of any partnership, joint venture, or corporation owned by [name of PROSPECTIVE WIFE] at the time of the parties' marriage or acquired by [name of PROSPECTIVE WIFE] following the marriage, whether the profits are distributed or undistributed;
6. all profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [name of PROSPECTIVE WIFE] after the date of the parties' marriage, and all income and property derived from the reinvestment of [name of PROSPECTIVE WIFE]'s profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received during the marriage, together with all interest and dividend income received by [name of PROSPECTIVE WIFE] during the marriage;
7. all future contributions to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf of [name of PROSPECTIVE WIFE] after the date of the parties' marriage, together with all increases in value of all such plans;
8. all interests in any trust in which [name of PROSPECTIVE WIFE] has an interest, including but not limited to all corpus of those trusts, as well as all distributed and undistributed income from those trusts;

9. all recovery for personal injuries and/or property losses sustained by [**name of PROSPECTIVE WIFE**] during the parties' marriage, including any recovery for loss of earning capacity during the marriage; and

10. all property and property rights acquired by [**name of PROSPECTIVE WIFE**] by gift, devise, or descent.

3.4 No Commingling Intended

Neither party intends to commingle his or her separate property with the separate property of the other party, except when intentionally done in a joint financial account, and neither party may claim an interest in any separate property of the other party as a result of such commingling, except as provided in this agreement.

3.5 No Community Estate Will Arise

[**Name of PROSPECTIVE HUSBAND**] and [**name of PROSPECTIVE WIFE**] specifically understand and agree that no community estate will arise or be created during their marriage. Therefore, [**name of PROSPECTIVE HUSBAND**] and [**name of PROSPECTIVE WIFE**] agree that all earnings for personal services and services rendered, including bonuses, director's compensation, commissions, and wages or salary of each party, as well as all other income received by a party, including interest and dividend income, profits, distributions, revenues, royalties, stock, stock options, warrants, and other compensation and benefits of any type and any income and property derived from the reinvestment of such earnings and income, will be the separate property of the respective party.

3.6 Asset Descriptions

The parties have tried to use the correct legal description for each asset listed in any schedule attached to this agreement. If any asset is incorrectly described, the description used is adequate for the purposes of this agreement and accompanying schedules, and the parties agree to execute any additional paperwork required to confirm ownership in the name of the party in whose schedule the asset appears.

3.7 Confirmation of Agreement and Income from Separate Property

The parties agree that, not later than thirty days after their marriage, they will each execute the Property Agreement and Ratification of Premarital Agreement (the "Property Agreement") [**include if applicable:** , a copy of which is attached to this agreement as Exhibit [**exhibit number/letter**]]. The parties agree that, to the maximum extent allowed by law, the failure to execute the Property Agreement will not invalidate this agreement or affect any of its terms or provisions. Whether the Property Agreement is executed or not, all the provisions of this agreement are binding, including but not limited to the effect of causing the income from the separate property of [**name of PROSPECTIVE HUSBAND**] to be [**name of PROSPECTIVE**

HUSBAND]'s separate property and the income from the separate property of **[name of PROSPECTIVE WIFE]** to be **[name of PROSPECTIVE WIFE]**'s separate property. Confirmation of this agreement in the form of the Property Agreement is in effect a partition and exchange agreement. All future earnings and income arising from the separate property of **[name of PROSPECTIVE HUSBAND]** shall be the separate property of **[name of PROSPECTIVE HUSBAND]** unless the parties specifically agree in writing to the contrary. All future earnings and income arising from the separate property of **[name of PROSPECTIVE WIFE]** shall be the separate property of **[name of PROSPECTIVE WIFE]** unless the parties specifically agree in writing to the contrary.

3.8 Management of Properties

Each party will have the full, free, and unrestricted right to manage the separate property over which he or she has control under section 3.101 of the Texas Family Code or succeeding provisions of similar import and nature, including without limitation the right to convey or encumber the property; to dispose of it by sale, gift, or otherwise; and to deal with it without taking into consideration any rights or interests of the other party. If the joinder of **[name of PROSPECTIVE HUSBAND]** or **[name of PROSPECTIVE WIFE]** ("joining party") should be required by law in connection with the execution of any document by the other party with respect to the separate property of the other party, on request and from time to time, the joining party must execute all such documents necessary to effect the desires of the other party, including gift tax returns, but without any personal liability of the joining party. Neither party will have the authority to encumber or dispose of the other party's separate property without the other party's express written consent. Notwithstanding any of the provisions set forth in this section 3.8, the parties agree that any gift in excess of the annual gift tax exclusion that would be applied to either party's unified lifetime credit must be consented to in writing by the parties before the making of the gift.

3.9 Certain Events Not Evidence of Community Property

The following events may not, under any circumstances, be considered evidence of any intention to create community property:

1. the filing of joint tax returns;
2. the taking of title to property, whether real or personal, in joint tenancy or in any other joint or common form;
3. the designation of one party by the other party as a beneficiary of his or her estate or as trustee or any other form of fiduciary;
4. the combining or mixing by one party of his or her separate funds or property with the the separate funds or property of the other party, including the pledging of joint or separate credit for the benefit of the other party's separate estate;

5. any oral statement by either party;
6. any written statement by either party, other than a written agreement signed by both parties to convert separate property to community property pursuant to the Texas Family Code;
7. the payment from the funds of either party for any obligations, including but not limited to the payment of mortgages, interest, real property taxes, repairs, or improvements on a separately or jointly held residence; and
8. the joint occupation of a separately owned residence, even though designated as a homestead.

The provisions of this section 3.9 are not comprehensive.

3.10 No Legal Action against Separate Property of [name of PROSPECTIVE HUSBAND]

In recognition of the fact that all property described on Schedule A of this agreement is stipulated and agreed to be the separate property of **[name of PROSPECTIVE HUSBAND]**, **[name of PROSPECTIVE WIFE]** expressly disclaims any right to take any legal action against any of the entities listed on Schedule A in connection with any divorce proceeding or other legal action regarding this agreement. Specifically, **[name of PROSPECTIVE WIFE]** agrees that she is not entitled to, and shall not seek, any temporary restraining order, injunctive relief, receivership, or other legal relief that would in any way restrict, inhibit, or affect the ability of any of the entities listed on Schedule A of this agreement from operating their business affairs as each entity deems appropriate, including each such entity's right to sell, purchase, or alienate property, to transfer or pledge property, to incur or pay debt, to exercise stock options or warrants, to issue stock, to raise capital, to liquidate any assets, to enter into or change any contractual relationships, to make expenditures or incur any indebtedness, or to merge or in any way alter its business organization or form.

3.11 No Legal Action against Separate Property of [name of PROSPECTIVE WIFE]

In recognition of the fact that all property described on Schedule B of this agreement is stipulated and agreed to be the separate property of **[name of PROSPECTIVE WIFE]**, **[name of PROSPECTIVE HUSBAND]** expressly disclaims any right to take any legal action against any any of the entities listed on Schedule B in connection with any divorce proceeding or other legal action regarding this agreement. Specifically, **[name of PROSPECTIVE HUSBAND]** agrees that that he is not entitled to, and shall not seek, any temporary restraining order, injunctive relief, receivership, or other legal relief that would in any way restrict, inhibit, or affect the ability of any of any of the entities listed on Schedule B of this agreement from operating their business affairs as each entity deems appropriate, including each such entity's right to sell, purchase, or alienate property, to transfer or pledge property, to incur or pay debt, to exercise stock options or warrants, to warrants, to issue stock, to raise capital, to liquidate any assets, to enter into or change any

contractual relationships, to make expenditures or incur any indebtedness, or to merge or in any way alter its business organization or form.

3.12 Other Temporary Orders during Dissolution

If either party files a dissolution proceeding, the parties agree that during the pendency of the action neither party will request or seek to enforce any restraining order or injunction that could have the effect of inhibiting or prohibiting a party from making decisions concerning or disposing of his or her separate property. Further, neither party will have the right to the temporary use or possession of any separate property owned solely by the other party, either real or personal. Nothing in this section 3.12 affects the ability of either party to request or seek to enforce any order for the benefit of a child of both parties.

Article 4 Liabilities

4.1 Liabilities of [name of PROSPECTIVE HUSBAND]

The liabilities and obligations described in Schedule C, which is attached to this agreement and made a part of it for all purposes, and all other liabilities and obligations of **[name of PROSPECTIVE HUSBAND]** as of the date of the parties' marriage that are not included in Schedule C are the sole and separate property liabilities and obligations of **[name of PROSPECTIVE HUSBAND]** and must be satisfied and paid solely from his separate estate. **[Name of PROSPECTIVE HUSBAND]** agrees to forever hold harmless, indemnify, and defend **[name of PROSPECTIVE WIFE]** and her property from any claim arising from these liabilities and obligations.

Any taxes, interest, or penalties that **[name of PROSPECTIVE HUSBAND]** may owe to any taxing authority, foreign or domestic, for years or taxable periods before the date of the parties' marriage are the sole and separate property liabilities and obligations of **[name of PROSPECTIVE HUSBAND]**, to be satisfied and paid solely from his separate estate and from which he agrees to forever hold harmless, indemnify, and defend **[name of PROSPECTIVE WIFE]** and her property from any claim.

4.2 Liabilities of [name of PROSPECTIVE WIFE]

The liabilities and obligations described in Schedule D, which is attached to this agreement and made a part of it for all purposes, and all other liabilities and obligations of **[name of PROSPECTIVE WIFE]** as of the date of the parties' marriage that are not included in Schedule D are the sole and separate property liabilities and obligations of **[name of PROSPECTIVE WIFE]** and must be satisfied and paid solely from her separate estate. **[Name of PROSPECTIVE WIFE]** agrees to forever hold harmless, indemnify, and defend **[name of PROSPECTIVE HUSBAND]** and his property from any claim arising from these liabilities and obligations.

Any taxes, interest, or penalties that **[name of PROSPECTIVE WIFE]** may owe to any taxing authority, foreign or domestic, for years or taxable periods before the date of the parties' marriage are the sole and separate property liabilities and obligations of **[name of PROSPECTIVE WIFE]**, to be satisfied and paid solely from her separate estate and from which she agrees to forever hold harmless, indemnify, and defend **[name of PROSPECTIVE HUSBAND]** and his property from any claim.

4.3 Future Business Transactions of [name of PROSPECTIVE HUSBAND]

To protect **[name of PROSPECTIVE WIFE]**'s separate property from liability associated with any future business transactions following the parties' marriage, excluding transactions conducted by **[name of PROSPECTIVE HUSBAND]** on behalf of his employer, **[name of PROSPECTIVE HUSBAND]** agrees to take all reasonable steps and perform all reasonable actions to ensure that all future business transactions in which **[name of PROSPECTIVE HUSBAND]** is involved during the parties' marriage are handled either through a separate-property entity of **[name of PROSPECTIVE HUSBAND]** that exists now or through a new entity capitalized with **[name of PROSPECTIVE HUSBAND]**'s separate property in the future. Further, **[name of PROSPECTIVE HUSBAND]** agrees to take all steps and perform all actions necessary to prevent **[name of PROSPECTIVE WIFE]**'s separate property from being an obligor, a guarantor, or in any way liable for any future business transactions in which **[name of PROSPECTIVE HUSBAND]** participates.

4.4 Future Business Transactions of [name of PROSPECTIVE WIFE]

To protect **[name of PROSPECTIVE HUSBAND]**'s separate property from liability associated with any future business transactions following the parties' marriage, excluding transactions conducted by **[name of PROSPECTIVE WIFE]** on behalf of her employer, **[name of PROSPECTIVE WIFE]** agrees to take all reasonable steps and perform all reasonable actions to ensure that all future business transactions in which **[name of PROSPECTIVE WIFE]** is involved during the parties' marriage are handled either through a separate-property entity of **[name of PROSPECTIVE WIFE]** that exists now or through a new entity capitalized with **[name of PROSPECTIVE WIFE]**'s separate property in the future. Further, **[name of PROSPECTIVE WIFE]** agrees to take all steps and perform all actions necessary to prevent **[name of PROSPECTIVE HUSBAND]**'s separate property from being an obligor, a guarantor, or in any way liable for any future business transactions in which **[name of PROSPECTIVE WIFE]** participates.

4.5 Pending or Future Litigation

[Name of PROSPECTIVE HUSBAND] agrees to indemnify and hold **[name of PROSPECTIVE WIFE]** and her property harmless from all costs and liabilities arising from all pending and future litigation caused or alleged to have been caused solely by **[name of PROSPECTIVE HUSBAND]**'s acts or omissions.

[Name of PROSPECTIVE WIFE] agrees to indemnify and hold [name of PROSPECTIVE HUSBAND] and his property harmless from all costs and liabilities arising from all pending and future litigation caused or alleged to have been caused solely by [name of PROSPECTIVE WIFE]'s acts or omissions.

Article 5
Future Credit Transactions

5.1 Future Credit Transactions of Parties

If either party enters into a transaction wherein either party becomes obligated on any debt, and unless a contrary intent is specifically and expressly stated, the obligation must be satisfied by the party incurring the obligation or liability wholly from that party's separate property, and that party must hold the other party and his or her property harmless from the obligation and indemnify him or her if he or she is ever required to satisfy the obligation. The assets, if any, acquired through any such credit transactions will be and remain the separate property of a party to the extent the party obligates his or her separate property for the credit extended in acquiring the assets or resulting in the acquisition of the assets. Similarly, any business failure of the parties or any bankruptcy, reorganization, composition, arrangement, or other debtor/creditor action of or against a party will in no way affect the other party, and neither party is relying or will rely on the other party for any credit, accommodation, or indulgence in these regards.

Article 6
Household and Personal Expenses

6.1 Household and Personal Expenses

The parties may agree to maintain one or more joint bank accounts, which will be designated as the "Household Account" or some similar name, and that the account will be used for the purposes described below. In that event, each party agrees to contribute _____[number] dollars (\$[amount]) per month. Except as otherwise specifically stated, the funds on deposit in the account will be used for payment of the mortgage payment (principal and interest), rent, groceries, utilities, maintenance and repairs, and all other miscellaneous household expenses (collectively called "living expenses") that may arise during the marriage. The payment by one party of all or a majority of any living expenses will not create a right of reimbursement by the party paying those living expenses, affect the character of any property currently in existence or property that may be acquired in the future, or create an ownership interest in any property by a party that the party does not already have and does not acquire in the future by other means.

To the extent the parties elect to open and maintain one or more joint bank accounts, each party will have an undivided one-half interest in the funds on deposit in the account(s) as his or her separate property. Each party will have an undivided one-half interest in all assets acquired with any funds from a joint bank account as his or her separate property.

If either party dies, all funds remaining in any joint bank account(s) will be the sole and separate property of the surviving party.

Article 7 Joint Acquisition of Assets

7.1 Joint Acquisition of Assets

The parties will have the option, but not the obligation, to acquire assets together in their joint names. If the parties jointly acquire assets following their marriage, they will each own an undivided interest in the jointly acquired assets as their respective sole and separate property in an amount equal to the percentage of their respective contributions toward the purchase of the assets. If the parties jointly acquire assets, and to the extent legal title to any or all of the assets can be perfected in their joint names, such as title to an automobile, boat, or real property, they will obtain title in their joint names. However, even though title to an asset acquired by the parties is held in their joint names, the percentage of ownership of such an asset will be controlled by the provisions of this article, and the taking of title in their joint names may not be interpreted to mean that each party has an undivided 50 percent ownership interest in jointly acquired assets. If legal title cannot be obtained in the parties' joint names with respect to a jointly acquired asset, the parties agree to execute a memorandum stipulating that the asset was jointly acquired by the parties. Jointly acquired property may not be deemed to be community property but instead will constitute each party's separate property in proportion to that party's contribution to the purchase price; provided, however, that if there are no records verifying the amount of each party's contribution toward the purchase of an asset, each party will own an undivided 50 percent interest in that asset.

Article 8 Taxes

8.1 Tax Liability

The parties agree to execute separate income tax returns during their marriage unless they agree that it is to their mutual advantage to file a joint tax return for any year.

For each year of the parties' marriage, [**name of PROSPECTIVE HUSBAND**] must report all of his separate-property income. In calculating [**name of PROSPECTIVE HUSBAND**]'s [**HUSBAND**]'s separate-property tax liability, he is entitled to use all withholding, estimated tax payments, exemptions, deductions, charitable contributions, and tax credits (sometimes collectively

collectively called “adjustments”) that are solely attributable to his separate-property estate and income. **[Name of PROSPECTIVE HUSBAND]** is further entitled to use all current and prior year year carryforwards (as well as all carryforwards arising in the future), including but not limited to net net operating losses, passive losses, suspended losses, long-term capital losses, and short-term capital losses (sometimes collectively called “carryforwards”) that are strictly associated with his separate-property estate and income. The income tax liability arising from **[name of PROSPECTIVE HUSBAND]**’s separate property is the sole liability of **[name of PROSPECTIVE PROSPECTIVE HUSBAND]**, who agrees to fully discharge that tax liability, including penalties penalties and interest, if any, out of his separate-property estate. **[Name of PROSPECTIVE HUSBAND]** further agrees to indemnify and hold **[name of PROSPECTIVE WIFE]** and her separate property harmless from (and **[name of PROSPECTIVE HUSBAND]** releases **[name of of PROSPECTIVE WIFE]** and her property from) all such tax liability, including penalties and interest, if any, together with all tax liens of every kind and character that might hereafter arise from from the filing of his separate return or his failure to file necessary or proper returns or to pay the required taxes with respect to his separate-property taxable income.

For each year of the parties’ marriage, **[name of PROSPECTIVE WIFE]** must report all of her separate-property income. In calculating **[name of PROSPECTIVE WIFE]**’s separate-property tax liability, she is entitled to use all adjustments and carryforwards that are solely attributable to her separate-property estate and income. The income tax liability arising from **[name of PROSPECTIVE WIFE]**’s separate property shall be the sole liability of **[name of PROSPECTIVE WIFE]**, who agrees to fully discharge that tax liability, including penalties and interest, if any, out of her separate-property estate. **[Name of PROSPECTIVE WIFE]** further agrees to indemnify and hold **[name of PROSPECTIVE HUSBAND]** and his separate property harmless from (and **[name of PROSPECTIVE WIFE]** releases **[name of PROSPECTIVE HUSBAND]** and his property from) all such tax liability, including penalties and interest, if any, together with all tax liens of every kind and character that might hereafter arise from the filing of her separate return or her failure to file necessary or proper returns or to pay the required taxes with respect to her separate-property taxable income.

Each party is solely obligated to pay, from his or her separate-property estate, all estimated tax payments, if any, associated with his or her separate-property tax liability that are required to be paid for all taxable years that the parties are married.

All tax refunds that may be received in the future are the sole and separate property of the party whose separate-property estate generated the refund.

8.2 *Joint Tax Returns*

Notwithstanding the provisions of section 8.1 above and the intent and desire of the parties to parties to file separate tax returns and to retain the wholly separate character of their respective separate properties, the parties acknowledge that the Internal Revenue Code, as amended, and the regulations thereunder, and similar codes and regulations of other states in certain instances provide, provide, or may provide in the future, savings in taxes for married couples filing joint returns. If that

that is the case, the parties may file joint returns, but their election to file joint tax returns for any year of their marriage does not constitute a waiver of any provision of this agreement. At the option of either party, a party may request individual calculations to determine the pro rata share of any tax liability or tax refund as between each party's separate-property estate and the community-property estate in accordance with section 8.1 above.]

Article 9

Dissolution of Marriage by Court Order

9.1 Property to [name of PROSPECTIVE HUSBAND]

If either party files any proceeding for divorce, annulment, or to declare their marriage void (a "dissolution proceeding"), **[name of PROSPECTIVE WIFE]** agrees that **[name of PROSPECTIVE HUSBAND]** will be awarded all his separate property, including all property described in this agreement as being the separate property of **[name of PROSPECTIVE HUSBAND]**. **[Name of PROSPECTIVE WIFE]** agrees to release all interests or claims she may have in **[name of PROSPECTIVE HUSBAND]**'s separate property. **[Name of PROSPECTIVE WIFE]** further agrees to execute any documents necessary to set aside and confirm to **[name of PROSPECTIVE HUSBAND]** his separate property and to release any and all claims that **[name of PROSPECTIVE WIFE]** might have in and to **[name of PROSPECTIVE HUSBAND]**'s separate property.

9.2 Property to [name of PROSPECTIVE WIFE]

In the event of a dissolution proceeding between the parties, **[name of PROSPECTIVE HUSBAND]** agrees that **[name of PROSPECTIVE WIFE]** will be awarded all her separate property, including all property described in this agreement as being the separate property of **[name of PROSPECTIVE WIFE]**. **[Name of PROSPECTIVE HUSBAND]** agrees to release all interests or claims he may have in **[name of PROSPECTIVE WIFE]**'s separate property. **[Name of PROSPECTIVE HUSBAND]** further agrees to execute any documents necessary to set aside and confirm to **[name of PROSPECTIVE WIFE]** her separate property and to release any and all claims that **[name of PROSPECTIVE HUSBAND]** might have in and to **[name of PROSPECTIVE WIFE]**'s separate property.

9.3 Liabilities to [name of PROSPECTIVE HUSBAND]

In the event of a dissolution proceeding between the parties, **[name of PROSPECTIVE HUSBAND]** agrees to be responsible for and pay all liabilities and obligations associated with his separate property, including all property described in this agreement as being the separate property of **[name of PROSPECTIVE HUSBAND]**. **[Name of PROSPECTIVE HUSBAND]** further agrees to indemnify and hold **[name of PROSPECTIVE WIFE]** and her property harmless from all liabilities associated with **[name of PROSPECTIVE HUSBAND]**'s separate property.

9.4 *Liabilities to [name of PROSPECTIVE WIFE]*

In the event of a dissolution proceeding between the parties, **[name of PROSPECTIVE WIFE]** agrees to be responsible for and pay all liabilities and obligations associated with her separate property, including all property described in this agreement as being the separate property of **[name of PROSPECTIVE WIFE]**. **[Name of PROSPECTIVE WIFE]** further agrees to indemnify and hold **[name of PROSPECTIVE HUSBAND]** and his property harmless from all liabilities associated with **[name of PROSPECTIVE WIFE]**'s separate property.

9.5 *Waiver of Temporary Spousal Support, Spousal Maintenance, and Alimony*

Neither party is entering into the marriage to obtain temporary spousal support, spousal maintenance, or alimony of any kind in the event of a dissolution proceeding. Each party waives any right that may exist under law to seek or obtain temporary spousal support, spousal maintenance, or alimony from the other party. If a court of competent jurisdiction orders either party to pay to the other party, or to a third party on behalf of the other party, temporary spousal support, spousal maintenance, or alimony of any kind during the pendency of a dissolution proceeding, that temporary spousal support, spousal maintenance, or alimony paid by one party to the other in connection with such a dissolution proceeding must be reimbursed to the party paying the temporary spousal support, spousal maintenance, or alimony within five days after receipt by the receiving party. Without limiting the generality of the foregoing, thus, for example, if \$1,000 in temporary alimony is paid by **[name of PROSPECTIVE HUSBAND]** to **[name of PROSPECTIVE WIFE]** during the pendency of a dissolution proceeding, the sum of \$1,000 must be reimbursed to **[name of PROSPECTIVE HUSBAND]** by **[name of PROSPECTIVE WIFE]** within five days after **[name of PROSPECTIVE WIFE]** receives the \$1,000 from **[name of PROSPECTIVE HUSBAND]**.

The parties agree, in the event the receiving party fails to reimburse the paying PROSPECTIVE HUSBANDS required above, that the party paying the temporary spousal support, spousal maintenance, or alimony shall be allowed a dollar-for-dollar offset against all future temporary spousal support, spousal maintenance, or alimony payments to be paid by the paying party to the receiving party **[include if applicable: or against other existing financial obligations on behalf of the community estate or on behalf of the receiving party]**. In the event of a failure by the receiving party to reimburse any temporary spousal support, spousal maintenance, or alimony payment to the paying party within five days as required above, the paying party shall notify the receiving party of the paying party's intent to exercise his or her right to offset all amounts unreimbursed at that point against all subsequent temporary spousal support, spousal maintenance, or alimony payments to be paid by the paying party **[include if applicable: or against other existing financial obligations on behalf of the community estate or on behalf of the receiving party]**. The paying party shall also notify the receiving party exactly which financial obligations the unreimbursed payments will be offset against. On receipt of that notice from the paying party, the receiving party shall be discharged from the obligation of reimbursement to the extent of the amount of the offset.

9.6 *Waiver of Right to Occupy Separate-Property Residence*

In the event of the filing of a dissolution proceeding, and in the event the parties' marital homestead is owned by one PROSPECTIVE HUSBANDs his or her separate property, the nonowner spouse agrees to waive all right he or she may have to continue residing in the marital homestead, both during the pendency of the dissolution proceeding and following the dissolution of the parties' marriage. In that event, the nonowning spouse agrees to vacate the marital homestead no later than [number] days following his or her receipt of notice of the filing of the dissolution proceeding.

9.7 *Release and Waiver*

If either party files a dissolution proceeding, neither party may request the court to divide the property of either or both parties in a manner contrary to the terms of this agreement.

Each party relinquishes, disclaims, and waives all rights, title, and interest that he or she may have to seek a division of property and liabilities in a dissolution proceeding contrary to what is provided for in this agreement.

9.8 *Division of Community Estate*

If the parties' marriage is dissolved by court order, all community property acquired during the marriage, if any community property arises despite the parties' intent to the contrary, must be equally divided between the parties according to the existing fair market value of each asset. If the parties cannot agree on the fair market value, the fair market value will be determined by appraisals. The division of the community property may be made by distributing the entire interest of certain properties to one party, with an equalizing distribution of the properties or funds to the other party.

9.9 *Attorney's Fees*

During the pendency of any dissolution proceeding, neither party may be required to pay interim attorney's fees, costs, or other expenses to the other party or the other party's attorney. Each party further agrees to pay his or her own attorney's fees, costs, and other expenses on final hearing of any dissolution proceeding.

Article 10
Dissolution of Marriage by Death

10.1 *[Name of PROSPECTIVE HUSBAND]'s Acceptance of [name of PROSPECTIVE WIFE]'s Will and Waivers to Be Signed on Death of [name of PROSPECTIVE WIFE]*

[Name of PROSPECTIVE HUSBAND] agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of [name of PROSPECTIVE WIFE]'s WIFE]'s death in full discharge, settlement, and satisfaction of any and all right, title, and interest

interest that he, as **[name of PROSPECTIVE WIFE]**'s husband, might otherwise acquire in her estate and property.

Unless designated as a named beneficiary under a written instrument, **[name of PROSPECTIVE HUSBAND]** waives and releases to **[name of PROSPECTIVE WIFE]**, her executors, administrators, or assigns, any and all rights of election given to him as the husband of **[name of PROSPECTIVE WIFE]**, or through him to his heirs, to take against her last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which **[name of PROSPECTIVE WIFE]** may have property at the time of her death.

If the marriage of the parties is dissolved by the death of **[name of PROSPECTIVE WIFE]**, **[name of PROSPECTIVE HUSBAND]** agrees and hereby binds his personal representatives and heirs to agree to release and convey to **[name of PROSPECTIVE WIFE]**'s estate any interest he may then have or claim to have in the separate property of **[name of PROSPECTIVE WIFE]**, including any property described in this agreement as being the separate property of **[name of PROSPECTIVE WIFE]** or as belonging to **[name of PROSPECTIVE WIFE]**'s separate estate, other than any benefit conferred on **[name of PROSPECTIVE HUSBAND]** in article 11 of this agreement. **[Name of PROSPECTIVE HUSBAND]** agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this agreement. **[Name of PROSPECTIVE WIFE]** hereby binds her personal representatives and heirs to release and convey to **[name of PROSPECTIVE HUSBAND]** all of the interest, if any, that **[name of PROSPECTIVE WIFE]** or her estate may have in the then separate property of **[name of PROSPECTIVE HUSBAND]** and in all the property described in this agreement as being the separate property of **[name of PROSPECTIVE HUSBAND]** or as belonging to **[name of PROSPECTIVE HUSBAND]**'s separate estate unless otherwise provided for in article 11 of this agreement.

10.2 [Name of PROSPECTIVE WIFE]'s Acceptance of [name of PROSPECTIVE HUSBAND]'s Will and Waivers to Be Signed on Death of [name of PROSPECTIVE HUSBAND]

[Name of PROSPECTIVE WIFE] agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of **[name of PROSPECTIVE HUSBAND]**'s death in full discharge, settlement, and satisfaction of any and all right, title, and interest that she, as **[name of PROSPECTIVE HUSBAND]**'s wife, might otherwise acquire in his estate and property.

Unless designated as a named beneficiary under a written instrument, **[name of PROSPECTIVE WIFE]** waives and releases to **[name of PROSPECTIVE HUSBAND]**, his executors, administrators, or assigns, any and all rights of election given to her as the wife of **[name of PROSPECTIVE HUSBAND]**, or through her to her heirs, to take against his last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which **[name of PROSPECTIVE HUSBAND]** may have property at the time of his death.

If the marriage of the parties is dissolved by the death of **[name of PROSPECTIVE HUSBAND]**, **[name of PROSPECTIVE WIFE]** agrees and hereby binds her personal representatives and heirs to agree to release and convey to **[name of PROSPECTIVE HUSBAND]**'s estate any interest she may then have or claim to have in the separate property of **[name of PROSPECTIVE HUSBAND]**, including any property described in this agreement as being the separate property of **[name of PROSPECTIVE HUSBAND]** or as belonging to **[name of PROSPECTIVE HUSBAND]**'s separate estate, other than any benefit conferred on **[name of PROSPECTIVE WIFE]** in article 11 of this agreement. **[Name of PROSPECTIVE WIFE]** agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this agreement. **[Name of PROSPECTIVE HUSBAND]** hereby binds his personal representatives and heirs to release and convey to **[name of PROSPECTIVE WIFE]** all of the interest, if any, that **[name of PROSPECTIVE HUSBAND]** or his estate may have in the then separate property of **[name of PROSPECTIVE WIFE]** and in all the property described in this agreement as being the separate property of **[name of PROSPECTIVE WIFE]** or as belonging to **[name of PROSPECTIVE WIFE]**'s separate estate unless otherwise provided for in article 11 of this agreement.

10.3 Family Allowance to Surviving Spouse

The parties agree that the surviving spouse will not have the right to petition the court for the payment of a family allowance for the support of the surviving spouse following the death of a party. In that regard, the surviving spouse hereby waives and releases to the deceased party and his or her executors, administrators, or assigns any and all rights to a family allowance now or hereafter in force in Texas or any other state or foreign jurisdiction.

10.4 Life Estate in Homestead

In the event of a party's death, the surviving party irrevocably waives any right he or she might otherwise then have under the provisions of any "homestead" rights, now or hereafter in force under the constitution or the laws of Texas or any other state or foreign nation, as well as all rights he or she might have under the provisions of the Texas Probate Code, as amended, relating to the right to have a life estate in the homestead of the parties.

Article 11 Retirement Benefits

11.1 Waiver of Retirement Benefits by [name of PROSPECTIVE HUSBAND]

Unless named by a written instrument as a beneficiary by **[name of PROSPECTIVE WIFE]**, **[name of PROSPECTIVE HUSBAND]** waives all right, title, and interest, if any, that he may acquire by virtue of his marriage to **[name of PROSPECTIVE WIFE]** in all of **[name of PROSPECTIVE WIFE]**'s retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of **[name of PROSPECTIVE WIFE]**'s past, present, or future employment. **[Name of PROSPECTIVE**

HUSBAND] acknowledges that this waiver includes all rights that he may have to receive benefits or payments from any 401(k) plan, SEP account, individual retirement account, profit-sharing plan, or any other type of employee benefit plan that **[name of PROSPECTIVE WIFE]** has or may have in the future. **[Name of PROSPECTIVE HUSBAND]** further waives all rights he may have, after the marriage of the parties, to participate in any decisions concerning the designation of beneficiaries or election of benefits or any other types of decisions to be made by **[name of PROSPECTIVE WIFE]** under the terms of her current or future employee benefit plan or plans. **[Name of PROSPECTIVE HUSBAND]** agrees to execute the Property Agreement between Spouses within five days of being presented that document in order to comply with all requests by **[name of PROSPECTIVE WIFE]** involving **[name of PROSPECTIVE WIFE]**'s designation of beneficiaries in connection with her current or future employee benefit plan or plans of any type. **[Name of PROSPECTIVE HUSBAND]** further agrees to consent in writing to, and accept, **[name of PROSPECTIVE WIFE]**'s designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be requested or required by **[name of PROSPECTIVE WIFE]** at any time with respect to any such plan or plans, even if the consent does not provide for the payment of survivor benefits on **[name of PROSPECTIVE WIFE]**'s death.

11.2 Waiver of Retirement Benefits by [name of PROSPECTIVE WIFE]

Unless named by a written instrument as a beneficiary by **[name of PROSPECTIVE HUSBAND]**, **[name of PROSPECTIVE WIFE]** waives all right, title, and interest, if any, that she may acquire by virtue of her marriage to **[name of PROSPECTIVE HUSBAND]** in all of **[name of PROSPECTIVE HUSBAND]**'s retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of **[name of PROSPECTIVE HUSBAND]**'s past, present, or future employment. **[Name of PROSPECTIVE WIFE]** acknowledges that this waiver includes all rights that she may have to receive benefits or payments from any 401(k) plan, SEP account, individual retirement account, profit-sharing plan, or any other type of employee benefit plan that **[name of PROSPECTIVE HUSBAND]** has or may have in the future. **[Name of PROSPECTIVE WIFE]** further waives all rights she may have, after the marriage of the parties, to participate in any decisions concerning the designation of beneficiaries or election of benefits or any other types of decisions to be made by **[name of PROSPECTIVE HUSBAND]** under the terms of his current or future employee benefit plan or plans. **[Name of PROSPECTIVE WIFE]** agrees to execute the Property Agreement between Spouses within five days of being presented that document in order to comply with all requests by **[name of PROSPECTIVE HUSBAND]** involving **[name of PROSPECTIVE HUSBAND]**'s designation of beneficiaries in connection with his current or future employee benefit plan or plans of any type. **[Name of PROSPECTIVE WIFE]** further agrees to consent in writing to, and accept, **[name of PROSPECTIVE HUSBAND]**'s designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be requested or required by **[name of PROSPECTIVE HUSBAND]** at any time with respect to any such plan or plans, even if the consent does not provide for the payment of survivor benefits on **[name of PROSPECTIVE HUSBAND]**'s death.

Article 12

Gifts

12.1 Gifts

The parties acknowledge that during their marriage each party may, from time to time, make gifts of property to the other party. These interspousal gifts may be made on a special occasion, such as a birthday or anniversary, or on any other occasion a party may choose. The parties recognize that frequently claims of “gifts” are alleged in the context of a dissolution proceeding. To remove any uncertainty about the issue of interspousal gifts, the parties agree that:

1. Gifts of wearing apparel, jewelry, and athletic equipment may be established by parol testimony if the item or property is customarily used and enjoyed exclusively by the party claiming it as a gift to him or her;

2. Gifts of other items of personal property not covered by item 1. above, such as furnishings, artwork, cash, and collections, must be established by clear and convincing evidence; and

3. Any property that is held by title, as in a deed, in a certificate, or by account name, may not be effectively transferred to the party claiming it as a gift unless, in fact, the deed, certificate, or account is transferred by name to the party claiming the gift.

12.2 Gift Tax Consequences

Each party retains the right to make gifts of his or her separate property without regard to blood or other relationship of the donee. Conditional on any such gift being made from the separate property of a party, the party making the gift may deem the other party as the donor of one-half of the gift for federal tax purposes, if allowable under the relevant law, provided such gift does not result in any personal liability, gift tax liability, Generation Skipping Transfer Tax liability or loss of unified credit from federal gift taxes, estate taxes and Generation Skipping Transfer Tax exemption to the deemed “donor.”. If the deemed donor is held responsible for the payment of federal gift tax, Generation Skipping Transfer Tax liability or loss of unified credit from federal gift taxes, estate taxes and Generation Skipping Transfer Tax exemption to the deemed “donor”, the actual donor must indemnify and hold harmless the deemed donor and his or her property from the liability and must reimburse the deemed donor the amount of the tax, including all penalties and interest, if any, within ten days after the deemed donor has paid any such taxes, penalties, or interest. Notwithstanding any of the provisions set forth in this section 12.2 to the contrary, the parties agree that any gift in excess of the annual gift tax exclusion that would be applied to either party’s unified lifetime credit must be consented to in writing by the parties before the making of the gift.

Article 13
Independent Conveyances or Bequests

13.1 Independent Conveyances or Bequests

If either party voluntarily conveys to the other party an interest in his or her separate property that is declared by law, or by this agreement, to be the separate property of one party, either by will, survivorship agreement, or instrument of conveyance or by document of title signed by the transferring party, the provisions of that will, survivorship agreement, instrument of conveyance, or document of title control over the provisions of this agreement to the extent of any conflict between the two documents regarding such property other than property that is personal to the other party. Absent such a will, survivorship agreement, instrument of conveyance, or document of title expressly conveying such property, all properties remain in the ownership of the party owning or designated as owning the property as his or her separate property.

Nothing in this agreement may be construed as prohibiting one party from giving property to the other party by will, survivorship agreement, instrument of conveyance, document of title, or other written instrument between the parties.

Article 14
General Agreements

14.1 General Agreements

Except as specifically set forth in this agreement to the contrary, [**name of PROSPECTIVE HUSBAND**] and [**name of PROSPECTIVE WIFE**] agree to the following:

1. That the separate property of each party, and the property described or created in this agreement as being the separate property of or belonging to the separate estate of each party, will be free from any claim of the other party that may arise as a result of or during the marriage.
2. That any money used for the benefit of the other party will be presumed to be a gift to the other party, as contrasted with a payment for which reimbursement or repayment is later expected, unless the parties agree otherwise in writing.
3. That this agreement applies during the lifetime of both parties, including on dissolution of their marriage by court order, as well as on the death of either or both parties.
4. That this agreement extends to any rights, whether choate or inchoate, that may arise under the laws of any jurisdiction.

Article 15 Reimbursement

15.1 No Reimbursement Claims

[Name of PROSPECTIVE HUSBAND] waives the right to assert any claim for reimbursement that he might have in the future on behalf of or against the community estate. [Name of PROSPECTIVE HUSBAND] further waives the right to assert any claim for reimbursement that he might have in the future against the separate estate of [name of PROSPECTIVE WIFE].

[Name of PROSPECTIVE WIFE] waives the right to assert any claim for reimbursement that she might have in the future on behalf of or against the community estate. [Name of PROSPECTIVE WIFE] further waives the right to assert any claim for reimbursement that she might have in the future against the separate estate of [name of PROSPECTIVE HUSBAND].

Article 16 Arbitration

16.1 Arbitration

The provisions for binding arbitration must be in accordance with Texas arbitration law, including but not limited to sections 6.601 and 153.0071 of the Texas Family Code.

The parties agree to submit to binding arbitration any dispute or controversy regarding the validity, interpretation, or enforceability of this agreement, as well as all issues involving its enforcement in connection with a dissolution proceeding between the parties. Each party expressly waives any right to trial by a court or trial by a jury. If a dissolution proceeding or declaratory judgment proceeding is filed in Texas, the arbitrator appointed under this agreement will simultaneously be designated as special master under the Texas Rules of Civil Procedure, and the parties agree to jointly apply to the court for any orders that are necessary to vest the arbitrator with all powers and authority of a special master under the rules.

The parties agree to appoint one arbitrator, whose decisions will be binding in all respects. Any arbitrator appointed by the parties must be an attorney who has undergone arbitration training conducted by the American Bar Association or the American Academy of Matrimonial Lawyers and is in good standing with the State Bar of Texas. The first party requesting arbitration must designate the name of an arbitrator in the request. The other party must then designate the name of an arbitrator. If the parties cannot agree on an arbitrator within fourteen days after either party's written request for arbitration, the two designees must select a qualified arbitrator, who will be designated the sole arbitrator of the dispute. If the parties cannot agree on the ground rules and procedures to be followed during the arbitration proceedings, the arbitrator shall have the sole authority to establish the ground rules and procedures to be followed

during the arbitration proceeding. The parties agree to attend the arbitration on the date and at the time and place set by the arbitrator. The cost of arbitration must be borne as the arbitrator directs. The award of the arbitrator will be binding and conclusive on the parties, and a judgment setting forth the arbitration award may be entered in any court of competent jurisdiction.

Article 17

General Provisions

17.1 When Effective

The parties are executing this agreement before their marriage, to be effective on the date of their marriage, and it will exist through the whole of their marriage and thereafter, until it is fully performed, amended, or revoked. This agreement is void following its execution if the parties are not married within ninety days.

17.2 Execution of Documents

Each party agrees to cooperate fully with the other in performing all acts and in executing, acknowledging, and delivering all instruments and documents required to accomplish the intent of this agreement.

17.3 Presumption of Separate Property

Any property held in [**name of PROSPECTIVE HUSBAND**]'s individual name is presumed to be the separate property of [**name of PROSPECTIVE HUSBAND**]. Any property held in [**name of PROSPECTIVE WIFE**]'s individual name is presumed to be the separate property of [**name of PROSPECTIVE WIFE**]. Any property or liability inadvertently omitted from the schedules attached to this agreement is the separate property or liability of the party to whom it belongs or by whom it was incurred.

17.4 Enforceability

This agreement may be enforced by suit in law or equity by either of the parties or by their heirs, executors, attorneys, or assigns. Each party agrees that, by signing this agreement and accepting any benefit whatsoever under it, he or she is estopped and barred from making any claim of any kind at any time to any separate property or the separate estate of the other party or to any property described in this agreement as being the separate property of the other party. Each party waives his or her right to make claims to any separate property of the other party or to any property designated as belonging to the separate estate of the other party, whether the property is acquired before or after this agreement is signed.

17.5 Place of Performance; Governing Law; Application

All rights, duties, and obligations under this agreement are payable and enforceable in [**county**] County, Texas.

Texas law in effect at the date of the parties' marriage governs the construction, interpretation, and enforcement of this agreement to the maximum extent permitted by law.

The parties expressly intend and agree that this agreement applies to and governs all real and personal property, wherever situated, owned by either party at the time of marriage or acquired by either party after marriage, regardless of any change of domicile of the parties or the location of the real estate. If one or both of the parties ever becomes domiciled in a jurisdiction other than Texas, the status of all property thereafter acquired by that party must be controlled to the maximum extent by the terms of this agreement interpreted under Texas law in effect at the date of the parties' marriage. The desire of the parties that each preserve his or her separate property or separate estate under Texas law and keep it free from the claims of the other party corresponds to their desire that each party should have and hold the property free from the claims of the other party under the laws of all other jurisdictions, even if the other jurisdictions do not recognize community property but instead speak of "marital property" and "nonmarital property" or like terms. For any property of either party whose ownership is not controlled by the marital property laws of Texas, when this agreement speaks of property as being the separate property of a party, reference is made to property acquired in such a manner that it would meet the definition of separate property under the Texas Constitution or the Texas Family Code, as amended.

17.6 Successors

This agreement binds and inures to the benefit of the parties and their respective legatees, devisees, heirs, executors, legal and personal representatives, assigns, transferees, and successors in interest.

17.7 Waiver of Breach or Term

The waiver of any breach of any provision of this agreement does not waive any other breach of that or any other provision. Waiver of any term of this agreement may be accomplished only concerning future performance and only by a written instrument signed by both parties expressly stating the provisions waived.

17.8 Amendment or Modification

This agreement may be waived, abandoned, modified, amended, discharged, or terminated only by a written instrument signed by both parties that specifically identifies the waiver, abandonment, modification, amendment, discharge, or termination.

17.9 Attorney's Fees and Expenses for Enforcement

If either party brings an action or other proceeding to enforce this agreement or to enforce any judgment, decree, or order made by a court in connection with this agreement, the prevailing party will be entitled to recover reasonable attorney's fees and other necessary costs from the other party. If either party files a declaratory judgment proceeding to determine the enforceability of

of this agreement, neither party will be entitled to an award of attorney's fees unless a party successfully challenges the validity of this agreement, in which event the court will have the authority to award attorney's fees. If either party seeks to invalidate some or all of this agreement or the related Property Agreement between Spouses or seeks to recover property in a manner at variance with this agreement or the related Property Agreement between Spouses, the successful party will be entitled to recover reasonable attorney's fees and other necessary costs from the other party.

17.10 Exclusive Remedy for Nonmonetary Breach

Except as expressly provided otherwise in this agreement, the exclusive judicial remedy of either party against the other for failure to perform any nonmonetary duty or obligation under any provision of this agreement is judicial enforcement by judgment for specific performance or mandatory injunction and writ of execution to compel performance, plus reasonable attorney's fees. Neither party is entitled to recover any damages, actual or consequential, for any nonmonetary breach. No failure of either party to perform any nonmonetary duty or obligation under this agreement diminishes or impairs the full effectiveness of its provisions.

17.11 Partial Invalidity

If any provision of this agreement is for any reason found to be unenforceable, all other provisions nonetheless remain enforceable.

17.12 Assignment Prohibited

This agreement is personal to the parties, and neither party may assign or delegate any of his or her rights or obligations under it.

17.13 Entire Agreement

This instrument contains the parties' entire agreement on the subject matter of the agreement. This agreement replaces any earlier agreements or understandings, whether written or oral, and there are no contemporaneous written or oral agreements that are not fully expressed in it.

17.14 Titles and Captions

Article headings, titles, and captions contained in this agreement are merely for reference and do not define, limit, extend, or describe the scope of this agreement or any provision.

17.15 No Construction against Draftsman

No provision of this agreement may be interpreted for or against any part because the party or his or her legal representative drafted the provision.

17.16 Representation

The attorney representing [**name of PROSPECTIVE HUSBAND**] is [**name**]. The attorney representing [**name of PROSPECTIVE WIFE**] is [**name**]. [**Name of PROSPECTIVE HUSBAND**] has not received any legal, financial, or other kind of advice from [**name of PROSPECTIVE WIFE**] or from her attorney, [**name**], in connection with the advisability or nonadvisability of entering into this agreement. [**Name of PROSPECTIVE WIFE**] has not received any legal, financial, or other kind of advice from [**name of PROSPECTIVE HUSBAND**] or from his attorney, [**name**], in connection with the advisability or nonadvisability of entering into this agreement. [**Name of PROSPECTIVE HUSBAND**] is relying on his own judgment and the advice of his attorney in entering into this agreement. [**Name of PROSPECTIVE WIFE**] is relying on her own judgment and the advice of her attorney in entering into this agreement.

17.17 Incorporation of Schedules

All schedules to this agreement are fully incorporated into this agreement as completely as if they were copied verbatim in the body of it.

17.18 Nondisqualification

If any dispute arises out of this agreement, whether by arbitration or litigation, each party waives any claim of disqualification against representation of the other party by the attorneys who participated in negotiating and drafting this agreement.

17.19 Suits Affecting the Parent-Child Relationship

Nothing in this agreement affects either party's rights in any suit affecting the parent-child relationship.

17.20 Multiple Originals

This agreement is executed in multiple originals. This agreement is signed after the execution of the Waiver of Disclosure of Financial Information.

Article 18 Representations and Warranties

WARNING

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE IS PERMANENTLY SURRENDERING RIGHTS AND CLAIMS HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW AND UNDER THE LAW OF OTHER JURISDICTIONS.

18.1 *Representations and Warranties of [name of PROSPECTIVE HUSBAND]*

My name is **[name of PROSPECTIVE HUSBAND]**. I represent and warrant that:

1. I have carefully read each and every page of this agreement and all schedules attached or referred to, in their entirety.
2. I am fully and completely informed by my attorney about the law relating to the subject matter of this agreement and of the Property Agreement between Spouses and about the spousal rights and liabilities of both parties on entering into marriage.
3. I AM ENTERING INTO THIS AGREEMENT VOLUNTARILY AFTER RECEIVING THE ADVICE OF INDEPENDENT COUNSEL.
4. I have given careful and mature thought to the making of this agreement.
5. I fully and completely understand each provision of this agreement, concerning both the subject matter and the legal effect.
6. I have investigated the property and financial obligations of **[name of PROSPECTIVE WIFE]** sufficiently to satisfy any questions I have in that regard, and I expressly waive any right to disclosure of the property and financial obligations of **[name of PROSPECTIVE WIFE]** beyond the disclosures provided.
7. I am not relying on any fiduciary obligations owed by one party to the other party or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by **[name of PROSPECTIVE WIFE]** or anyone acting on her behalf.
8. I fully understand that, by signing this agreement and accepting any benefit whatsoever under it, I will be estopped from making any claim of any kind at any time to any separate property or the separate estate of **[name of PROSPECTIVE WIFE]**, except as expressly provided for in this agreement.
9. I fully understand that by executing this agreement I may be adversely affecting my inheritance rights and property and that I am permanently surrendering rights to income and property I would otherwise have under Texas law].
10. I am executing this agreement with intent to be bound fully by all its terms.

[Name of PROSPECTIVE HUSBAND]

18.2 *Representations and Warranties of [name of PROSPECTIVE WIFE]*

My name is **[name of PROSPECTIVE WIFE]**. I represent and warrant that:

1. I have carefully read each and every page of this agreement and all schedules attached or referred to, in their entirety].
2. I am fully and completely informed by my attorney about the law relating to the subject matter of this agreement and of the Property Agreement between Spouses and about the spousal rights and liabilities of both parties on entering into marriage.
3. I AM ENTERING INTO THIS AGREEMENT VOLUNTARILY AFTER RECEIVING THE ADVICE OF INDEPENDENT COUNSEL.
4. I have given careful and mature thought to the making of this agreement.
5. I fully and completely understand each provision of this agreement, concerning both the subject matter and the legal effect.
6. I have investigated the property and financial obligations of **[name of PROSPECTIVE HUSBAND]** sufficiently to satisfy any questions I have in that regard, and I expressly waive any right to disclosure of the property and financial obligations of **[name of PROSPECTIVE HUSBAND]** beyond the disclosures provided.
7. I am not relying on any fiduciary obligations owed by one party to the other party or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by **[name of PROSPECTIVE HUSBAND]** or anyone acting on his behalf.
8. I fully understand that, by signing this agreement and accepting any benefit whatsoever under it, I will be estopped from making any claim of any kind at any time to any separate property or the separate estate of **[name of PROSPECTIVE HUSBAND]**, except as expressly provided for in this agreement.
9. I fully understand that by executing this agreement I may be adversely affecting my inheritance rights and property and that I am permanently surrendering rights to income and property I would otherwise have under Texas law].
10. I am executing this agreement with intent to be bound fully by all its terms.

[Name of PROSPECTIVE WIFE]

EXECUTED in multiple originals on the dates and at the times of the acknowledgments shown below.

STATE OF TEXAS)

COUNTY OF _____)

This instrument was acknowledged before me at _____ .M. on _____ by [**name of PROSPECTIVE HUSBAND**].

Notary Public, State of Texas

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement.

STATE OF TEXAS)

COUNTY OF _____)

This instrument was acknowledged before me at _____ .M. on _____ by [**name of PROSPECTIVE WIFE**].

Notary Public, State of Texas

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement.

Schedule A

To Premarital Agreement between **[name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** dated **[date]**.

Property of **[name of PROSPECTIVE HUSBAND]**

1. The following real property, commonly known as **[address]**, **[city]**, **[county]** County, Texas, including but not limited to all rental income, sales proceeds, warranties, keys, house plans, service contracts, and utility deposits relating to it, and more particularly described as follows:

[legal description].

2. All sums of cash in the possession of or subject to the control of **[name of PROSPECTIVE HUSBAND]**, together with all interest income, mutations, enhancements, and increases therefrom, including money on account in banks, savings institutions, or other financial institutions, which accounts stand in **[name of PROSPECTIVE HUSBAND]**'s name or from which **[name of PROSPECTIVE HUSBAND]** has a right to withdraw funds or which are subject to **[name of PROSPECTIVE HUSBAND]**'s control, including but not limited to money on account in the following banks, savings institutions, or other financial institutions:

[list institution // account identification // balance and date].

3. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases, mutations, enhancements, interest income, and the proceeds therefrom, and all other rights related to any Keogh plan, profit-sharing plan, retirement plan, pension plan, annuity, money market investment account, individual retirement account, or like benefit program existing by reason of **[name of PROSPECTIVE HUSBAND]**'s past, present, or future employment, including but not limited to:

[list institution // account identification // balance and date].

4. All wearing apparel, jewelry, and other personal effects in the possession of or subject to the control of **[name of PROSPECTIVE HUSBAND]** or otherwise owned by him as of the date of the parties' marriage.

5. All personal property, household furnishings, fixtures, artwork, antiques, china, silver, crystal, equipment, guns, and other household items currently in the possession of or subject to the control of **[name of PROSPECTIVE HUSBAND]**, as well as all other items otherwise owned by him as of the date of the parties' marriage.

6. All policies of life insurance, including all cash values and any increases, mutations, enhancements, interest income, and dividend income received therefrom, insuring the life of **[name of PROSPECTIVE HUSBAND]**, including but not limited to the following:

[list insurer // policy identification // cash value, face amount and date].

7. The **[year and model]** automobile, vehicle identification number **[number]**, together with all prepaid insurance.

8. The following specific property, the value of which is estimated by **[name of PROSPECTIVE HUSBAND]**:

[list – describe property and estimated value]

9. All other property and property rights set aside to **[name of PROSPECTIVE HUSBAND]** under the terms of this Premarital Agreement.

[Name of PROSPECTIVE HUSBAND]

Schedule B

To Premarital Agreement between **[name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** dated **[date]**.

Property of **[name of PROSPECTIVE WIFE]**

1. The following real property, commonly known as **[address]**, **[city]**, **[county]** County, Texas, including but not limited to all rental income, sales proceeds, warranties, keys, house plans, service contracts, and utility deposits relating to it, and more particularly described as follows:

[legal description].

2. All sums of cash in the possession of or subject to the control of **[name of PROSPECTIVE WIFE]**, together with all interest income, mutations, enhancements, and increases therefrom, including money on account in banks, savings institutions, or other financial institutions, which accounts stand in **[name of PROSPECTIVE WIFE]**'s name or from which **[name of PROSPECTIVE WIFE]** has a right to withdraw funds or which are subject to **[name of PROSPECTIVE WIFE]**'s control, including but not limited to money on account in the following banks, savings institutions, or other financial institutions:

[list institution // account identification // balance and date].

3. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases, mutations, enhancements, interest income, and the proceeds therefrom, and all other rights related to any Keogh plan, profit-sharing plan, retirement plan, pension plan, annuity, money market investment account, individual retirement account, or like benefit program existing by reason of **[name of PROSPECTIVE WIFE]**'s past, present, or future employment, including but not limited to:

[list institution // account identification // balance and date].

4. All wearing apparel, jewelry, and other personal effects in the possession of or subject to the control of **[name of PROSPECTIVE WIFE]** or otherwise owned by her as of the date of the parties' marriage.

5. All personal property, household furnishings, fixtures, artwork, antiques, china, silver, crystal, equipment, guns, and other household items currently in the possession of or subject to the control of **[name of PROSPECTIVE WIFE]**, as well as all other items otherwise owned by her as of the date of the parties' marriage.

6. All policies of life insurance, including all cash values and any increases, mutations, mutations, enhancements, interest income, and dividend income received therefrom, insuring the life of **[name of PROSPECTIVE WIFE]**, including but not limited to the following:

[list insurer // policy identification // cash value, face amount and date].

7. The **[year and model]** automobile, vehicle identification number **[number]**, together with all prepaid insurance.

8. The following specific property, the value of which is estimated by **[name of PROSPECTIVE WIFE]**:

[list – describe property and estimated value]

9. All other property and property rights set aside to **[name of PROSPECTIVE WIFE]** under the terms of this Premarital Agreement.

[Name of PROSPECTIVE WIFE]

Schedule C

To Premarital Agreement between **[name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** dated **[date]**.

Liabilities of [name of PROSPECTIVE HUSBAND]

1. All indebtedness due on any separate-property asset listed in Schedule A of this agreement, unless specifically provided herein to the contrary.

2. All obligations of **[name of PROSPECTIVE HUSBAND]** specifically referred to in article 4 of this agreement.

3. All ad valorem taxes, personal property taxes, and assessments or other charges due or to become due in connection with any asset owned by **[name of PROSPECTIVE HUSBAND]** as his separate property.

4. The balance due, including principal and interest, on all credit cards and charge accounts in **[name of PROSPECTIVE HUSBAND]**'s name that are due and payable as of the date of his execution of this agreement, together with all amounts that may be due and payable following his execution of this agreement.

[list institution // account identification // estimated balance and date]

5. The following specific liabilities:

LIABILITIES

ESTIMATED AMOUNT

[specify].

6. All attorney's fees and other costs incurred by **[name of PROSPECTIVE HUSBAND]** in connection with the preparation of this Premarital Agreement.

7. All foreign, federal, and state income tax liabilities, including all penalties and interest, if any, of **[name of PROSPECTIVE HUSBAND]** for the year **[year]** and all prior years.

[Name of PROSPECTIVE HUSBAND]

Schedule D

To Premarital Agreement between **[name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** dated **[date]**.

Liabilities of **[name of PROSPECTIVE WIFE]**

1. All indebtedness due on any separate-property asset listed in Schedule B of this agreement, unless specifically provided herein to the contrary.

2. All obligations of **[name of PROSPECTIVE WIFE]** specifically referred to in article 4 of this agreement.

3. All ad valorem taxes, personal property taxes, and assessments or other charges due or to become due in connection with any asset owned by **[name of PROSPECTIVE WIFE]** as her separate property.

4. The balance due, including principal and interest, on all credit cards and charge accounts in **[name of PROSPECTIVE WIFE]**'s name that are due and payable as of the date of her execution of this agreement, together with all amounts that may be due and payable following her execution of this agreement.

[list institution // account identification // estimated balance and date]

5. The following specific liabilities:

LIABILITIES

ESTIMATED AMOUNT

[specify].

6. All attorney's fees and other costs incurred by **[name of PROSPECTIVE WIFE]** in connection with the preparation of this Premarital Agreement.

7. All foreign, federal, and state income tax liabilities, including all penalties and interest, if any, of **[name of PROSPECTIVE WIFE]** for the year **[year]** and all prior years.

[Name of PROSPECTIVE WIFE]

ATTACHMENT II

**VOLUNTARY WAIVER OF RIGHT TO ADDITIONAL
DISCLOSURE OF
FINANCIAL INFORMATION**

This Voluntary Waiver of Right to Additional Disclosure of Financial Information is made by **[name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** (the “parties”). The parties are not now married and are executing this waiver in accordance with the provisions of Section 4.006 of the Texas Family Code.

1. Waiver of Disclosure by [name of PROSPECTIVE HUSBAND]

I, **[name of PROSPECTIVE HUSBAND]**, in contemplation of my marriage to **[name of PROSPECTIVE WIFE]**, acknowledge receiving a copy of the proposed premarital agreement. I have read it and fully understand it. I have been provided a fair and reasonable disclosure of the property and financial obligations of **[name of PROSPECTIVE WIFE]**. I voluntarily waive any further disclosures regarding the property, including its value, and the financial obligations of **[name of PROSPECTIVE WIFE]** beyond the disclosures provided in the proposed premarital agreement. I acknowledge that I have been offered an opportunity to further investigate the property, including its value, and the financial obligations of **[name of PROSPECTIVE WIFE]**. However, I waive the opportunity for further investigation.

2. Waiver of Disclosure by [name of PROSPECTIVE WIFE]

I, **[name of PROSPECTIVE WIFE]**, in contemplation of my marriage to **[name of PROSPECTIVE HUSBAND]**, acknowledge receiving a copy of the proposed premarital agreement. I have read it and fully understand it. I have been provided a fair and reasonable disclosure regarding the property and financial obligations of **[name of PROSPECTIVE HUSBAND]**. I voluntarily waive any further disclosures regarding the property, including its value, and the financial obligations of **[name of PROSPECTIVE HUSBAND]** beyond the disclosures provided in the proposed premarital agreement. I acknowledge that I have been offered an opportunity to further investigate the property, including its value, and the financial obligations of **[name of PROSPECTIVE HUSBAND]**. However, I waive the opportunity for further investigation.

3. Execution

The parties acknowledge executing this Waiver of Disclosure of Financial Information in multiple originals on the dates and at the times of the acknowledgments. The parties further acknowledge signing this Waiver of Disclosure of Financial Information before the execution of the premarital agreement.

[Name of PROSPECTIVE HUSBAND]

[Name of PROSPECTIVE WIFE]

STATE OF TEXAS)

COUNTY OF _____)

This instrument was acknowledged before me at _____ .M. on
_____ by [name of PROSPECTIVE HUSBAND].

Notary Public, State of Texas

STATE OF TEXAS)

COUNTY OF _____)

This instrument was acknowledged before me at _____ .M. on
_____ by [name of PROSPECTIVE WIFE].

Notary Public, State of Texas

ATTACHMENT III

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made and entered into by and between **NAME OF HUSBAND** and **NAME OF WIFE**.

By Agreement dated the ____ day of _____, 2012 (hereinafter referred to as the "Agreement"), **NAME OF HUSBAND** and **NAME OF WIFE** have made agreements that may affect their respective interests in real property and/or personal property owned or to be owned by each of them.

The Agreement sets forth the entire agreement of the parties. This Memorandum does not alter, affect, or modify the provisions of the Agreement, but is executed for purposes of recordation, with the intent that this instrument shall be so recorded and thereby given notice of all terms and provisions of the Agreement.

EXECUTED as of the ____ day of _____, 2012.

NAME OF HUSBAND

NAME OF WIFE

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this the _____ day of _____, 2012, by **NAME OF HUSBAND**.

Notary Public State of Texas
My Commission Expires:

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this the _____ day of _____, 2012, by **NAME OF WIFE**.

Notary Public State of Texas
My Commission Expires:

ATTACHMENT IV

PROPERTY AGREEMENT AND RATIFICATION OF PREMARITAL AGREEMENT

The parties to this Property Agreement and Ratification of Premarital Agreement are **[name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]**, the spouses. This agreement is entered into in accordance with the Premarital Agreement previously executed by the spouses.

The spouses stipulate as follows:

1. **[Name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** were married on **[date]**.

2. The spouses presently own as separate property the real and/or personal property described in Schedules A and B of the Premarital Agreement. Schedule A contains a description of the property owned at the time of marriage by **[name of PROSPECTIVE HUSBAND]** as his sole and separate property, and Schedule C contains a description of his debts and obligations. Schedule B contains a description of the property owned at the time of marriage by **[name of PROSPECTIVE WIFE]** as her sole and separate property, and Schedule D contains a description of her debts and obligations.

3. The spouses desire to ratify their Premarital Agreement and to provide by this agreement (a) that all income arising from **[name of PROSPECTIVE HUSBAND]**'s separate property will be his separate property and remain under his ownership, management, and control, both during this marriage and on its dissolution by death or court order, unless such separate property is otherwise voluntarily transferred from **[name of PROSPECTIVE HUSBAND]** to **[name of PROSPECTIVE WIFE]** by will or other written instrument; and (b) that all income arising from **[name of PROSPECTIVE WIFE]**'s separate property will be her separate property and remain under her ownership, management, and control, both during this marriage and on its dissolution by death or court order, unless such separate property is otherwise voluntarily transferred from **[name of PROSPECTIVE WIFE]** to **[name of PROSPECTIVE HUSBAND]** by will or other written instrument.

In consideration of the mutual covenants contained in this agreement and other good and valuable consideration, receipt of which is hereby acknowledged, and in accordance with the Premarital Agreement previously entered into by the spouses, **[name of PROSPECTIVE HUSBAND]** and **[name of PROSPECTIVE WIFE]** agree as follows:

Article 1
Income Arising from Separate Property of [name of PROSPECTIVE HUSBAND]

All future earnings and income arising during marriage from the separate property of **[name of PROSPECTIVE HUSBAND]**, as well as all subsequent income arising from the reinvestment of that income, is the separate property of **[name of PROSPECTIVE HUSBAND]** unless the parties specifically agree in writing to the contrary.

Article 2
Income Arising from Separate Property of [name of PROSPECTIVE WIFE]

All future earnings and income arising during marriage from the separate property of **[name of PROSPECTIVE WIFE]**, as well as all subsequent income arising from the reinvestment of that income, is the separate property of **[name of PROSPECTIVE WIFE]** unless all parties specifically agree in writing to the contrary.

Article 3
Execution of Documents

Each spouse agrees to cooperate fully with the other spouse in performing all acts and in executing, acknowledging, and delivering any instruments or documents required to accomplish the intent of this agreement. The spouses further agree to execute all instruments or documents within **[number]** days of receipt from the other spouse.

Article 4
Ratification of Premarital Agreement

This agreement, as well as being a contract in its own right, is a ratification of the Premarital Agreement previously executed by the spouses before their marriage.

Article 5
Representation

The attorney representing **[name of PROSPECTIVE HUSBAND]** is **[name]**. The attorney representing **[name of PROSPECTIVE WIFE]** is **[name]**. **[Name of PROSPECTIVE PROSPECTIVE HUSBAND]** has not received any legal, financial, or other kind of advice from **[name of PROSPECTIVE WIFE]** or from her attorney, **[name]**, in connection with the advisability or nonadvisability of entering into this agreement. **[Name of PROSPECTIVE WIFE]** has not received any legal, financial, or other kind of advice from **[name of PROSPECTIVE HUSBAND]** or from his attorney, **[name]**, in connection with the advisability or nonadvisability of entering into this agreement. **[Name of PROSPECTIVE HUSBAND]** is relying on his own judgment and the advice of his attorney in entering into this agreement. **[Name of [Name of PROSPECTIVE WIFE]** is relying on her own judgment and the advice of her attorney in attorney in entering into this agreement.

[[Name of PROSPECTIVE HUSBAND]/[name of PROSPECTIVE WIFE]] acknowledges that [he/she] has been advised and encouraged and has had the opportunity to retain an attorney to represent [him/her] in connection with this agreement but has specifically declined to do so. Nevertheless, [[name of PROSPECTIVE HUSBAND]/[name of PROSPECTIVE WIFE]] represents and warrants that [he/she] has the requisite knowledge and training to fully understand this agreement and understands that by executing this agreement [he/she] may adversely affect [his/her] marital property rights. [[Name of PROSPECTIVE HUSBAND]/[name of PROSPECTIVE WIFE]] is relying on [his/her] own judgment in entering into this agreement.

WARNING

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE IS PERMANENTLY SURRENDERING RIGHTS TO INCOME OR PROPERTY HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW AND THE LAW OF OTHER JURISDICTIONS.

EXECUTED in multiple originals on the dates of the acknowledgments shown below.

Acknowledgment of [name of PROSPECTIVE HUSBAND]

My name is [name of PROSPECTIVE HUSBAND]. I acknowledge that:

1. I have carefully read each and every page of this agreement and all schedules referred to, in their entirety.
2. I am entering into this agreement freely and voluntarily [**include if applicable:** after receiving the advice of independent legal counsel].
3. I have given careful and mature thought to the making of this agreement.
4. I completely understand the provisions of this agreement concerning its nature, subject matter, and legal effect.
5. I have been completely informed of the facts relating to the subject matter of this agreement, including the fact that by signing this agreement I am permanently surrendering rights to income and property I would otherwise have under Texas law.
5. I am freely and voluntarily entering into this agreement and understand that by executing this agreement I may be adversely affecting my marital rights and property.

[Name of PROSPECTIVE HUSBAND]

Acknowledgment of [name of PROSPECTIVE WIFE]

My name is [name of PROSPECTIVE WIFE]. I acknowledge that:

1. I have carefully read each and every page of this agreement and all schedules referred to, in their entirety].

2. I am entering into this agreement freely and voluntarily [**include if applicable:** after receiving the advice of independent legal counsel].

3. I have given careful and mature thought to the making of this agreement.

4. I completely understand the provisions of this agreement concerning its nature, subject matter, and legal effect.

5. I have been completely informed of the facts relating to the subject matter of this agreement, including the fact that by signing this agreement I am permanently surrendering rights to income and property I would otherwise have under Texas law.

5. I am freely and voluntarily entering into this agreement and understand that by executing this agreement I may be adversely affecting my marital rights and property.

[Name of PROSPECTIVE WIFE]

STATE OF TEXAS)

COUNTY OF _____)

This instrument was acknowledged before me at _____ .M. on _____ by [name of PROSPECTIVE HUSBAND].

Notary Public, State of Texas

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement.

STATE OF TEXAS)

COUNTY OF _____)

This instrument was acknowledged before me at _____ .M. on _____ by [**name of PROSPECTIVE WIFE**].

Notary Public, State of Texas

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement.
