

# Something Old, Something New: Changes to Minnesota Law on Antenuptial Agreements



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Minnesota has long recognized the right of engaged couples to enter into antenuptial agreements — more casually referred to as “prenups.” While antenuptial agreements were once unique to celebrity couples and the ultra-wealthy, these agreements have become increasingly commonplace for engaged couples from all walks of life.

Importantly, Minnesota law on antenuptial agreements is changing, with an effective date of August 1, 2024. Before signing on the dotted line and saying “I do,” couples will need to understand the following changes to Minnesota law on antenuptial agreements and ensure their agreement complies with these changes.

## “Full and Fair” Financial Disclosure

Minnesota law has always required parties to an antenuptial agreement to make a full and fair disclosure of their income and assets to each other. But the relevant statute did not define what exactly qualifies as a “full and fair” disclosure.

Under the amended statute, a “full and fair disclosure” requires the parties to an antenuptial agreement to provide “a reasonably accurate description of all material facts of their income and good faith estimates of the value of their property” and disclose the basis for their financial disclosures. In other words, parties to an antenuptial agreement must provide a detailed financial net worth statement that also identifies the source documents used to obtain the information provided (e.g., account statements, appraisals, etc.).

## Timing

Minnesota law previously provided little guidance on the timing of signing an antenuptial agreement, only requiring the agreement to be executed at least the day before solemnization of the marriage.

The amended statute provides that an antenuptial agreement is presumed enforceable if it is entered into at least seven days before the marriage. Agreements that are entered into less than seven days before the marriage are **not** presumed to be enforceable, and in those cases, the party seeking to enforce the agreement has the burden of proof.

## Procedural Fairness

Antenuptial agreements must be procedurally fair to be enforceable. Courts previously applied a different procedural fairness analysis to antenuptial agreements addressing the division of nonmarital property than those addressing the division of marital property.

With the changes to Minnesota law, the same procedural fairness analysis applies to all antenuptial agreements. An antenuptial agreement is procedurally fair if:

- the parties made a full and fair disclosure of their income and property to each other;
- each party had a meaningful opportunity to consult with an attorney;
- the agreement is in writing, notarized, and executed in the presence of two witnesses;
- the agreement is entered into voluntarily and free of duress; and
- the agreement is signed at least seven days prior to the marriage.

Further, Minnesota common law previously required that an antenuptial agreement be supported by adequate consideration to be procedurally fair. However, the amended statute provides that the marriage itself is adequate consideration for the agreement.

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## Substantive Fairness

An antenuptial agreement must be substantively fair to be enforceable. A court's substantive fairness analysis was previously guided exclusively by case law.

The amended statute now delineates the required "substantive fairness" analysis. An agreement is substantively unfair if it is unconscionable to a party based on its terms or drastically changed circumstances that were not foreseen when the agreement was executed so that enforcement of the agreement would not match the parties' reasonable expectations at the time of the agreement. Notably, the fact that an agreement deviates from Minnesota law on property division or spousal maintenance does not make it unconscionable.

## Conclusion

The above changes to Minnesota's antenuptial agreement statute are intended to provide greater certainty regarding what is required for an antenuptial agreement to be enforceable.

For assistance with preparing, reviewing, or negotiating an antenuptial agreement, please contact one of Moss & Barnett's Family Law attorneys.