

DIVORCE MAGAZINE  
ARTICLE**MYTHS AND REALITIES: MATRIMONIAL AGREEMENTS ARE NOT IRONCLAD****BY [DAVID M. WILDSTEIN, ESQ.](#)**

In most states, marital agreements will only be enforced if they are fair and just. In determining the fairness of an agreement, the court will consider the following factors:

- Whether the parties had independent counsel to advise them of their rights and the legal consequences of the agreement;
- Whether there was fair disclosure of the assets and income of the parties so that each party could make an informed decision to accept or reject the agreement;
- Whether the terms of the agreement were so unfair that one party was significantly disadvantaged;
- Whether either party entered into the agreement under duress, coercion or undue influence;
- Whether the terms of the agreement were so ambiguous and confusing that a court could not reasonably interpret the intent of the parties.

In virtually all states, although an agreement may be enforceable, certain provisions of the agreement may be modifiable if there is a change in circumstances or it is against public policy to enforce the agreement. The following are examples:

- If the payor's income is significantly reduced, the payor may seek a reduction in alimony and child support. The reverse is also true. If the income of the payor increases, the payee may seek an increase if a justifiable need for an increase can be demonstrated;
- If there is a change in circumstance that would impact on the best interests of the children, custody and visitation rights may be modifiable. For example, if a child is failing out of school or a parent is addicted to drugs, a change in custody may be appropriate;
- If the agreement provides that the custodial parent waives child support, the court will view this provision as contrary to public policy and will not enforce it, unless special circumstances exist.

In essence, matrimonial agreements are not iron clad and are subject to being set aside or modified under appropriate circumstances.

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