ARE ALL SALES FINAL? ENFORCEABILITY OF A MARITAL AGREEMENT

Marital & Family Law Section

Chair: Kristin Kirkner - DeCort & Kirkner

In family law, perhaps more so than most practice areas, people sign financial agreements based on emotions, inappropriate or misguided expectations, or other reasons far afield from the terms of the deal.

People also sign agreements at very different stages of the marital relationship life cycle. A young bride-to-be may sign a prenuptial agreement thinking that her fiancé will take care of her forever. A party may sign a post-nuptial or marital settlement agreement thinking that doing so will save their marriage. Some parties to a crumbling relationship will sign an agreement due to pressure and without understanding their legal rights. Others will not sign anything until their lawyer has filed for divorce, taken extensive discovery, and thoroughly analyzed the parties' incomes, assets, and liabilities. The stage at which a marital agreement is executed is an important factor in determining whether the agreement is enforceable.

Two parties who are married or contemplating marriage are in a fiduciary relationship that requires them to act with a heightened obligation of good faith. *See Del Vecchio v. Del Vecchio,* 143 So. 2d 17, 21 (Fla. 1962). These parties are not dealing at arm's length, and courts must carefully examine their circumstances to determine the validity of their agreements. Courts recognize that there is a "vast difference between a contract made in the market place and one relating to the institution of marriage." *Lashkajani v. Lashkajani,* 911 So. 2d 1154, 1158 (Fla. 2005).

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A marital settlement agreement, like any contract, may be set aside where the agreement is the product of fraud, deceit, duress, coercion, misrepresentation, or overreaching. *See Casto v. Casto,* 508 So. 2d 330, 333 (Fla. 1987).

Pre-marital agreements, post-nuptial agreements, and marital settlement agreements executed before the parties enter into contested litigation may also be set aside where the agreement is unreasonable or unfair and the challenging spouse did not have adequate financial disclosure. *See Casto,* 508 So. 2d at 334-35. In making this determination, a court will presume that any financial disclosure was unfair. The court may also look at whether there was pressure surrounding the signing of the agreement, the value of the parties' respective interests, the disparity between the business experience of the parties, and whether the objecting party had approximate knowledge of the marital assets and liabilities at the relevant time. *See, e.g., Kearney v. Kearney,* 129 So. 3d 381, 386 (Fla. 1st DCA 2013).

Once the parties are "in litigation," they are no longer dealing with one another as fiduciaries, and the agreement will not be set aside simply because the terms might be viewed as unfair. *See Petracca v. Petracca,* 706 So. 2d 904, 911 (Fla. 4th DCA 1998). In litigation, parties are entitled to enter into bad agreements. And, after the parties have had access to discovery procedures, any attempt to set aside a settlement agreement must satisfy the more stringent standard set forth in Florida Rule of Civil Procedure 1.540. *See Macar v. Macar,* 803 So. 2d 707, 712-13 (Fla. 2001).

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Save the Date: Marital & Family Law Section Luncheon on November 19.