DRAFTING PREMARITAL AND MARITAL AGREEMENTS

FROM THE

ESTATE PLANNING PERSPECTIVE

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State Bar of Texas
14TH ANNUAL ADVANCED DRAFTING:
ESTATE PLANNING AND PROBATE COURSE
October 23-24, 2003
Dallas

CHAPTER 2.2
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NOTE 1: ALL FACT SITUATIONS DEPICTED IN THE CASE STUDIES ARE FICTIONAL

NOTE 2: THE SAMPLE FORMS PROVIDED IN THE APPENDICES ARE NOT INTENDED TO AND CANNOT REPLACE THE INDEPENDENT JUDGMENT OF EACH ATTORNEY WITH RESPECT TO APPLICABILITY, ACCURACY, VALIDITY AND TAX CONSEQUENCES IN PARTICULAR CIRCUMSTANCES AND ARE SUBMITTED WITHOUT WARRANTY.
DRAFTING PREMARITAL AND MARITAL AGREEMENTS FROM THE ESTATE PLANNING PERSPECTIVE

I. THE DILEMMA - OVERVIEW OF TEXAS MARITAL PROPERTY SYSTEM.

A. Foundation of Texas Marital Property System -- Texas Constitution.

The foundation of the Texas marital property system is the Texas Constitution. Tex. Const. art. XVI, § 15 (the "Texas Constitution"). Fundamental changes in Texas marital property law must be authorized by constitutional amendment. The basic rules of marital property are found in Chapters 3, 4 and 5 of the Texas Family Code, Tex. Fam. Code Ann. (1974), as amended (the "Texas Family Code").

B. General Rules.

1. Separate Property.

   Property owned by a spouse prior to marriage is the separate property of that spouse. Tex. Fam. Code § 3.001(1).

2. Post Marriage Property Acquired by Gift, Devise, or Inheritance.

   Property acquired by a spouse during marriage by gift, devise, or descent is the separate property of that spouse. Tex. Fam. Code § 3.001(2). In addition, as to gifts of property from one spouse to the other spouse, the future income or property arising from the gifted property is presumed to be the separate property of the donee spouse. Tex. Fam. Code § 3.005.

3. Recoveries for Personal Injuries.

   The recovery for personal injuries sustained by a spouse during marriage (except for the portion of recovery attributable to that spouse's loss of earning capacity during the marriage) is the separate property of that spouse. Tex. Fam. Code § 3.001(3).


   Property agreed to be the separate property of each spouse under a valid premarital property agreement ("premarital agreement"), which may also include income and earnings if so provided, is the separate property of that spouse. Tex. Fam. Code § 4.001.

5. Postmarital Agreement Property.

   Property acquired by a spouse as a result of a valid partition or exchange of community property with the other spouse, including a partition or exchange of community property to be acquired in the future, is the separate property of that spouse. In addition, (i) spouses may agree that income on each spouse's separate property is also the separate property of that spouse and (ii) beginning in September, 2003, income and future earnings on separate property received by a spouse under a valid partition or exchange agreement is the separate property of that spouse. Tex. Fam. Code §§ 4.102 and 4.103.

6. Property Traced to Separate Property.

   Property directly traceable to a spouse's separate property is the separate property of that spouse. Pechstein v. Pechstein, 174 S.W.2d 787 (Tex. Civ. App.--San Antonio 1943, no writ), holding that Texas land was husband's separate property because he purchased the land with his separate property. There are also a number of tracing principles that are used to identify separate property. For instance, the “community out first rule” provides that, if a bank account contains both separate and community funds, and funds are withdrawn, the presumption is that the community funds are withdrawn first. Welder v. Welder, 794 S.W.2d 420 (Tex. App.--Corpus Christi 1990, no writ).

2. Community Property.

   In Texas, community property consists of all property acquired by either spouse during marriage that is not separate property. Tex. Fam. Code § 3.002. Consider the following important rules:

a. All Property Presumed To Be Community.

   Property possessed by either spouse during or on dissolution of marriage is presumed to be community property. Tex. Fam. Code § 3.003(a). To rebut the community property presumption, it must be proven that the property is separate property by clear and convincing evidence. Tex. Fam. Code § 3.003(b); McKinley v. McKinley, 496 S.W.2d 540 (Tex. 1973); Allen v. Allen, 704 S.W.2d 600 (Tex. App.--Fort Worth 1986, no writ).

b. Income on Separate Property is Community.

   Absent an agreement to the contrary, income from separate property is community property. Colden v. Alexander, 171 S.W.2d 328 (Tex. 1943); King v. Matney, 259 S.W.2d 606 (Tex. Civ. App.--Amarillo 1953, writ ref'd n.r.e.). However, income on separate property received by a spouse under a valid partition or exchange agreement or by gift from the other spouse is separate property. Tex. Fam. Code §§ 4.005 and 4.102.
c. **Commingled Property.**

Commingled separate property can become community property if the property loses its separate character. *McKinley v. McKinley*, 496 S.W.2d 540 (Tex. 1973). Accordingly, the separate property of one spouse can become community property when the separate property becomes so commingled with the couple's community property that it cannot be traced. *Tarver v. Tarver*, 394 S.W.2d 780 (Tex. 1965).

d. **Quasi Community Property.**

Texas law provides very limited "alimony" rights upon divorce. Generally, each spouse is only entitled to walk away from the marriage with his or her separate property and his or her share of a "just and right" division of the community estate, if any. Tex. Fam. Code § 7.001. It is also clear that a spouse cannot be divested of his or her separate property. *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977). However, in order to prevent Texas from becoming a divorce haven, Texas courts developed the concept of "quasi community property." Quasi community property is property acquired by either spouse while domiciled in a common law state that would have been considered community property had the spouses lived in Texas as of the time of acquisition. *Cameron v. Cameron*, 641 S.W.2d 210 (Tex. 1982). If a divorce judge determines that the property is quasi community property, the court may subject it to a "just and right" division even though it technically may be the separate property of a spouse. Tex. Fam. Code § 7.002(a). Note also that if the court determines that the property acquired by a spouse in a common law jurisdiction (or Texas property traced to that property) would have been separate property if acquired in Texas, the court must award the property to the acquiring spouse. Tex. Fam. Code §§ 7.002(b). However, these rules only apply in divorce. They do not apply at death. *Hanau v. Hanau*, 730 S.W.2d 663 (Tex. 1987).

e. **Spousal Maintenance.**

Texas law provides modest "alimony" rights upon divorce (called "maintenance" in Texas), but only in two very limited cases. First, maintenance may be awarded if the spouse from whom maintenance is requested has been convicted of or received deferred adjudication for a criminal act that also constitutes an act of family violence within two years before the suit for divorce is filed or while the suit is pending. Tex. Fam. Code § 8.051(1). Second, maintenance may be awarded if the duration of the marriage was ten years or more, the spouse seeking maintenance lacks sufficient property to provide for his or her minimum reasonable needs, and the spouse seeking maintenance: (i) is unable to support himself or herself through employment due to physical or mental incapacity, (ii) is custodian of a child requiring substantial care due to the child's physical or mental incapacity and, therefore, cannot be employed outside the home, or (iii) clearly lacks earning ability in the labor market adequate to provide support for minimum reasonable needs. Tex. Fam. Code § 8.051(2). Maintenance is limited to the shortest reasonable period that allows the spouse to obtain the skills necessary to provide support for his or her minimum reasonable needs. Unless the spouse is prevented by a compelling impediment from obtaining gainful employment, maintenance is limited to three years. Tex. Fam. Code § 8.054. Finally, a maintenance award may not exceed the lesser of (i) $2,500 per month or (ii) 20 percent of the spouse’s average monthly gross income. Tex. Fam. Code § 8.055.

f. **Separate to Community by Agreement.**


g. **Inception of Title Rule.**

The "inception of title rule" is an important classification rule distinguishing Texas from several other community property states. The rule provides that the separate or community character of an asset is determined at the time the asset is acquired. Accordingly, if title to property is acquired by one spouse before marriage, or after marriage with separate funds, the property is the acquiring spouse's separate property. *John Hancock Mut. Life Ins. Co. v. Bennett*, 128 S.W.2d 791 (Tex. 1939); *McCurdy v. McCurdy*, 372 S.W.2d 381 (Tex. Civ. App.--Waco 1963, writ ref'd). *Hernandez v. Hernandez*, 703 S.W.2d 250 (Tex. App.--Corpus Christi 1985, no writ). For example, assume that during marriage, Husband sells his separate property parcel of realty (inherited from his father). He uses the proceeds to purchase Blackacre for cash (no credit). Blackacre is Husband's separate property. Consider some other applications of the rule.

a. **Premarriage Earnest Money Contract.**

When an individual executes an earnest money contract for the purchase of land prior to marriage and subsequently marries before closing, the land is the separate property of the spouse who executed the earnest money contract. *Carter v. Carter*, 736 S.W.2d 775 (Tex. App.--Houston [14th Dist.] 1987, no writ).

b. **Premarriage Installment Purchases.**

If one spouse purchases land under an installment contract or by mortgage prior to the marriage, that land
continues to be that spouse's separate property even though community funds are used after the marriage to make payments on the obligation. Welder v. Lambert, 44 S.W. 281 (Tex. 1898); Evans v. Ingram, 288 S.W. 494 (Tex. Civ. App.--Waco 1926, no writ). The expenditure of community funds, however, may entitle the community estate to a claim for economic contribution or reimbursement. Tex. Fam. Code §§ 3.403 and 3.408.

c. Property Acquired on Community Credit.

Property acquired on credit during marriage is presumed to be community property, but may, in some circumstances, be found to be separate property. Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975); Anderson v. Royce, 624 S.W.2d 621 (Tex. Civil App.--Houston 1981, no writ). The classification of an asset purchased all or in part on credit as community or separate property (or part community and part separate property) depends upon (i) the character of funds used to make the down payment and (ii) the character of credit, as between community or separate, used to finance the balance of the purchase price. The presumption of community credit may be rebutted in several ways.

(1) If the seller (or lender) agrees with the purchasing (or borrowing) spouse to look solely to the purchasing (or borrowing) spouse's separate property for satisfaction of the debt, the debt may create separate property. Gleich v. Bongio, 99 S.W.2d 881 (Tex. 1937); Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975); Dunlap v. Williamson, 683 S.W.2d 544 (Tex. App.--Austin 1984, no writ).

(2) If the spouses agree that (1) the asset is to be one spouse's separate property and (2) the deferred payments are to be made out of that spouse's separate property, the debt may create separate property. McClintic v. Midland Grocery & Dry Goods Co., 154 S.W. 1157 (Tex. 1913).

(3) If the spouse purchases the asset with borrowed funds and intends to pay the debt with proceeds from the sale of separate property, the debt may create separate property. However, the purchase of the asset and subsequent discharge of the debt must be nearly contemporaneous. Edsall v. Edsall, 240 S.W.2d 424 (Tex. Civil App.--Eastland 1951, no writ).

4. Economic Contribution.

In 1999, the Texas Family Code embraced the concept that one spouse may have a right of reimbursement for amounts contributed to the property of the other spouse. Under the 1999 statute, the enhancement in value due to a financial contribution made with community or separate property of one spouse created an "equitable interest" in the property of the other spouse. Law of September 1, 1999, Tex. Fam. Code §§ 3.401 and 3.402, 3.404 (repealed 2001). In 2001, the statutory provisions granting this marital property right were overhauled.

Under the 2001 provisions, the right is referred to as a "claim for economic contribution" rather than an "equitable interest." The "economic contribution" is computed in a dollar amount and generally applies to the limited circumstances where the equity in the property of one or both spouses increases in value during the marriage as a result of (a) the use of one spouse’s funds (separate or community) to reduce the principal balance of separate debt secured by the property of the other spouse (or community debt of both spouses if separate property funds of one spouse are used to reduce the principal on community debt) and (b) the use of one spouse’s funds (separate or community) to acquire or make capital improvements to the other spouse’s separate property (or community property if separate property funds are used to make the improvements). The 2001 provisions make clear that any of the three marital estates (i.e. community estate, wife’s separate estate, and husband’s separate estate) may make a claim for economic contribution against either of the other two marital estates. Tex. Fam. Code §§ 3.401(4) and 3.403(a). A new formula for calculating the value of the claim for economic contribution was provided under the 2001 provisions and has been amended again in 2003. Tex. Fam. Code § 3.403(b).

The claim for economic contribution does not create an ownership interest in the actual property, and the rule of inception of title still applies. Tex. Fam. Code § 3.404. Furthermore, the use and enjoyment of property during marriage does not create a claim of offsetting benefits to the claim for economic contribution of the non-owning spouse. Tex. Fam. Code § 3.403(e). When the marriage ends in divorce, the court must impose an equitable lien in order to secure payment of the claim for economic contribution and, in the case of death, the surviving spouse, personal representative or other interested party must request the imposition of such equitable lien. Tex. Fam. Code § 3.406.

5. Reimbursement.

A claim for economic contribution does not eliminate a claim for reimbursement under other Texas law, unless the particular factual situation also falls under the statutory coverage of a claim for economic contribution. Tex. Fam. Code § 3.408(a). In particular, a claim for reimbursement (not a claim for economic contribution) would be appropriate in case of (i) the payment by one marital estate on the unsecured liabilities of another
marital estate or (ii) inadequate compensation to the marital estate for the time, toil, talent, and effort of one spouse in a business entity under the control and direction of that spouse. Tex. Fam. Code § 3.408(b). See also, Trawick v. Trawick, 671 S.W. 2d 105 (Tex. Civ. App. – El Paso 1984, no writ). Further, claims for reimbursement, unlike claims for economic contribution, fall outside the scope of the statute and are subject to equitable principles allowing for an offset for the value of any "use and enjoyment" type benefits. Tex. Fam. Code §3.408(d).

C. Special Classification Rules.

1. Income

  Absent a valid agreement (e.g., a partition and exchange agreement) or gift from a spouse, income from separate property is community property. This rule is consistent with the Texas rule that assets acquired after the marriage other than by gift, devise, or descent are community property. However, in classifying "income" from separate property as community property, one must be sure that what is being received is "income" and not a return of capital.


  In Texas, mineral interests are characterized as real property interests. Because of the special nature of oil, gas, and other mineral interests (i.e., their depleting nature), part of the production of such interests may be considered a return of capital and therefore continue to retain the character, as between community and separate, of the underlying asset. Lessing v. Russek, 234 S.W.2d 891 (Tex. Civ. App.—Austin 1950, writ ref’d n.r.e.); Norris v. Vaughan, 260 S.W.2d 676 (Tex. 1963).

  (1) Bonus payments on a mineral interest are considered to retain the same character, as between community and separate property, as the underlying interest. Thus, if the mineral interest is separate property, bonus payments received are separate property. Waggoner Estate v. Wichita County, 273 U.S. 113 (1927); Lessing v. Russek, 234 S.W.2d 891 (Tex. Civ. App.—Austin 1950, writ ref’d n.r.e.)

  (2) Delay rentals are considered income and therefore community property. Such payments are merely akin to rental payments received by a lessee for the privilege of postponing the obligation to drill. McGarraugh v. McGarraugh, 177 S.W.2d 296 (Tex. Civ. App.—Amarillo 1943, writ dism’d).

  (3) Royalty interests are considered a return of capital and therefore retain the same character as the underlying interest. Such payments (often expressed in the form of a fraction of all the oil, gas, and other minerals produced under a tract of land) are considered part of the sales price of the land. Therefore, if the land is separate property, the royalty interest is separate property. Norris v. Vaughan, 260 S.W.2d 676 (Tex. 1963).

b. Trust Income.

  Income a beneficiary receives on a trust established for the beneficiary by gift or devise should be separate property. Hutchinson v. Mitchell, 39 Tex. 488 (1873); Monday v. Vance, 32 S.W. 559 (Tex. Civ. App. 1895, no writ); Wilmington Trust Company v. U.S., 753 F.2d 1055 (Fed. Cir. 1985), affirming 4 Cl. Ct. 6 (1983). Trust income, however, is probably community property if the beneficiary possesses rights and powers over the trust principal that are sufficient to result in constructive ownership of the trust. See e.g. Marriage of Long, 542 S.W.2d 712 (Tex. Civ. App.—Texarkana 1976, no writ).

c. Distributions from Corporations.

  (1) Cash dividends received are community property even if the underlying stock is separate property. The same rule applies with respect to interest on bonds and other debt related securities. Bakken v. Bakken, 503 S.W.2d 315 (Tex. Civ. App.—Dallas 1975, no writ).

  (2) Stock received as a result of stock splits and stock dividends, representing merely a change in corporate structure, retains the character of the original shares. Tirado v. Tirado, 357 S.W.2d 468 (Tex. Civ. App.—Texarkana 1962, writ dism’d). A like result is found with respect to a capital gain received upon the sale of publicly traded stocks or securities that are separate property. Bakken v. Bakken, 503 S.W.2d 315 (Tex. Civ. App.—Dallas 1975, no writ).

  (3) The classification of in kind distributions of corporate assets depends on whether the distribution is in the nature of a cash dividend or in the nature of a mutation of corporate stock, such as a distribution upon dissolution of the corporation. Hilliard v. Hilliard, 725 S.W.2d 722 (Tex. App.—Dallas 1985, no writ).

d. Distributions from Partnerships.

  The inception of title rule determines whether a partnership interest is separate or community property. Harris v. Harris, 765 S.W.2d 798, 802 (Tex. App.—Houston [14th Dist.] 1989, writ denied). However, if a partner receives his share of profits of a partnership during marriage, those profits are community property, regardless of whether the partnership interest is separate

e. Sole Proprietorships.
Profits earned by a spouse from the operation of a sole proprietorship are community property even if the capital of the business is a spouse’s separate property. In the Matter of the Marriage of York, 613 S.W.2d 764 (Tex. Civ. App.--Amarillo 1981, no writ).

2. Recovery for Personal Injury Claims.
The amount recovered by a spouse as a result of a personal injury is that spouse’s separate property except to the extent that the recovery represents reimbursement for medical expenses and loss of earnings capacity during marriage. Tex. Fam. Code § 3.001(3); Graham v. Franco, 488 S.W.2d 390 (Tex. 1972).

3. Employee Retirement Benefits and IRAs.
The general rule is that a non-employee spouse has no community property interest in the employee spouse’s retirement benefits subject to the Employee Retirement Income Securities Act of 1974, as amended (“ERISA”). Boggs v. Boggs, 520 U.S. 833 (1997). Ablamis v. Roper, 937 F.2d 1450 (9th Cir. 1991). Retirement benefits not governed by ERISA, i.e. traditional individual retirement accounts, are subject to a state’s community property rules. Thus, a non-participant spouse may have a community property interest in the participant spouse’s traditional IRA account. Allard v. Frech, 754 S.W.2d 111 (Tex. 1988). Nondisability military retirement benefits earned during marriage are community property. Haynes v. McIntosh, 776 S.W.2d 784, 786 (Tex. App.-- Corpus Christi 1989, writ denied). If the benefits are not divided in the divorce decree, the spouses own them as tenants in common, subject to a later suit for a partition. Harrell v. Harrell, 692 S.W.2d 876 (Tex. 1985). Military disability benefits accruing during marriage are the separate property of the disabled service person. Mansell v. Mansell, 490 U.S. 581 (1989).

4. Closely Held Business Interests.
a. General Rule.
The general rule is that if a spouse owned an incorporated business prior to the marriage or purchased that business with his or her separate property funds, then that corporate business is that spouse’s separate property. Jensen v. Jensen, 665 S.W.2d 107 (Tex. 1984).

b. The Fraud and Alter Ego Exceptions.
In some circumstances, the assets that come into a corporation during marriage will be deemed to be community assets even though one spouse owned the corporation before the marriage. This is the case when the corporation is deemed to be the “alter ego” of the owning spouse. The theory of alter ego is applied when viewing the corporation as an entity separate from the owning spouse and the community estate. Zisblatt v. Zisblatt, 693 S.W.2d 944 (Tex. App.--Fort Worth 1985, no writ). The theory of alter ego is an equitable remedy separate and apart from the rule of reimbursement. Id. at 952; Vallone v. Vallone, 644 S.W.2d 455 (Tex. 1983).

D. Result of Classification of Property as Community or Separate.

1. Divorce.
Upon divorce, each spouse is entitled to his or her separate property. Eggemeyer v. Eggemeyer, 554 S.W.2d 137 (Tex. 1977); Gerami v. Gerami, 666 S.W.2d 241 (Tex. App.--Houston [14th Dist.] 1984, no writ). Again, in a divorce proceeding, separate property acquired during marriage in a common law state that would have been community property had it been acquired in a community property state will be subject to division as community property. Tex. Fam. Code § 7.002(a); but cf. Tex. Fam. Code § 7.002(b). The community property is divided between the spouses in a manner that the court deems just and right. In dividing community property, the court will consider such factors as: the spouses’ respective earning capabilities, business opportunities, education, financial obligations, the size of the separate estates and the nature of the property in issue. Tex. Fam. Code § 7.001; Murff v. Murff, 615 S.W.2d 696 (Tex. 1981).

2. Succession at Death.
a. Intestate.
If one spouse dies without a will, the surviving spouse's interest in the deceased spouse's estate will in large part depend upon how the estate is classified as between community and separate. For example, assume that a husband dies without a will survived by a wife and two children.

(1) As to the husband's separate real property (a) the wife will inherit a life estate in an undivided one-third of the separate realty and one-third of the personal property outright and (b) the children will inherit the remaining interest in the separate realty and personal property. Tex. Prob. Code § 38(b).

(2) As to community property, the wife retains her one-half share and the husband's one-half share passes (a) to the wife if no child or other descendant of the husband survives or all surviving children and descendants of the husband are also children or descendants of the wife or (ii)
equally to the children if the husband is survived by any child or descendant who is not also a child or descendant of the wife. Tex. Prob. Code § 45.

b. Testate.

If a spouse dies with a valid will, the importance of separate and community property classifications would relate to the spouse’s ability to dispose of the estate. The spouse can only dispose of that spouse’s half of the community property and all of his or her separate property.

E. Management of the Marital Estate.

1. Focus.

The ability of a spouse to manage marital property (including, without limitation, buying, selling, leasing, or encumbering assets) depends in large part on (a) the characterization of the property as separate or community; and (b) the further characterization of community property as sole management or joint management community property.

2. Separate Property.

Each spouse has the sole power to manage, control, and dispose of his or her separate property. Tex. Fam. Code § 3.101. A major exception to this rule is homestead property, which generally requires the joinder of both spouses for any conveyance. Tex. Fam. Code § 5.001.

3. Community Property.

a. Sole Management Community Property.

Except for conveyance rights on homestead property, each spouse has the sole management, control, and disposition of community property that he or she would own if single, including personal earnings, revenue from separate property, recoveries for personal injuries, and the increase and mutations of, and the revenue from, all property subject to his or her sole management, control, and disposition (“sole management community property”). Tex. Fam. Code §§ 3.102(a) and 5.001. Property held in the name of one spouse alone is presumed to be the separate property or sole management community property of that spouse. Tex. Fam. Code § 3.104.

b. Joint Management Community Property.

Joint management community property (herein so called) is that property which results when sole management community property of one spouse is combined and mixed with the sole management community property of the other spouse. Tex. Fam. Code § 3.102(b). Joint management and control of this property is required unless one spouse provides otherwise by power of attorney or other agreement in writing. Tex. Fam. Code § 3.102(c).

4. Spouse’s Marital Property Liability.

a. General Rules.

The Texas Family Code sets forth general rules regarding the liability of marital property of a person for the obligations of that person’s spouse. However, all of the general rules are trumped if a person acts as an agent for the other spouse incurring debt or the other spouse incurs a debt for expenditures for necessary support. In either of these cases, a person’s separate property, sole management community property, and joint management community property are liable. Tex. Fam. Code §§ 2.501 and 3.201. In all other circumstances, the following general rules apply for liabilities of spouses:

(1) A person’s separate property will not be subject to liabilities of the other spouse (tortious or contractual) unless both spouses are liable by other rules of law. Tex. Fam. Code § 3.202(a).

(2) A person’s sole management community property is not subject to (a) any liabilities that the other spouse incurred before marriage or (b) any nontortious liabilities that the other spouse incurs during marriage unless both spouses are liable by other rules of law. Tex. Fam. Code § 3.202(b).

(3) A person’s sole management community property and the joint management community property of both spouses are subject to the liabilities incurred by that person before or during marriage. Tex. Fam. Code § 3.202(c).

(4) All community property will be subject to tortious liability of either spouse incurred during marriage. Tex. Fam. Code § 3.202(d).

b. Distinction Between Community Debt and Joint Liability.

(1) General—Presumption of Community Debt.

In Texas, debts incurred by either spouse (hereinafter sometimes referred to as the "contracting spouse") during marriage are presumed to be made upon the credit of the community estate and are therefore community debts, unless evidence can be shown that the creditor agreed to look solely to the separate estate of the contracting spouse for satisfaction of the debt. Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975); Humphrey v. Taylor, 673 S.W.2d 954 (Tex. App.--Tyler 1984, no writ).
Drafting Premarital and Marital Agreements from the Estate Planning Perspective

Chapter 2.2

(2) Debt May Give Rise to Joint Liability.

Whether a non-contracting spouse's separate property or sole management community property will be subject to liability on a community debt incurred by the other spouse may also depend upon express or implied agreement of the non-contracting spouse to be jointly liable. Texas courts have considered numerous factors in determining whether a non-contracting spouse has expressly or impliedly agreed to be jointly liable on a community debt incurred by the contracting spouse. These factors include: (i) whether the non-contracting spouse advanced the contracting spouse capital to enter into the business venture which subsequently gave rise to the contracting spouse's indebtedness, (ii) whether the non-contracting spouse had any knowledge of the contracting spouse's indebtedness, (iii) whether the non-contracting spouse verbally made a statement acknowledging the subject debt as his or her debt, or (iv) whether the non-contracting spouse benefited from the indebtedness. Cockerham v. Cockerham, 527 S.W.2d 162 (Tex. 1975).

II. THE POSSIBLE SOLUTION - PREMARITAL AND MARITAL PROPERTY AGREEMENTS.

A. Premarital Agreements.

Prior to a 1980 amendment of the Texas Constitution (the “1980 Constitutional Amendment”), it was doubtful whether persons about to marry could enter into a premarital agreement that provided that future income from separate property of a spouse could be that spouse’s separate property or that a spouse’s future earnings could be that spouse’s separate property. See, Williams v. Williams, 569 S.W.2d 867 (1978).

The 1980 Constitutional Amendment added language to the Texas Constitution that authorized “persons about to marry and spouses” (in place of “husband and wife”) to enter into written agreements to (i) partition “all or part of their property, then existing or to be acquired” (in place of “existing community property”) or (ii) “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”, resulting in the portion of or interest in the property set aside to each spouse being “a part of the separate property and estate of such spouse or future spouse.” Tex. Const. art. XVI, § 15 (1948, amended 1980). The 1980 Constitutional Amendment did not supplement other language that authorizes “spouses” to “agree between themselves that the income or property from all or part of the separate property then owned by one of them” or “which might thereafter be acquired” would be the separate property of that spouse. Id. Various amendments to the Texas Family Code followed, culminating in the enactment of the Uniform Premarital Agreement Act in 1987. The Texas Premarital Act (herein so called) provides comprehensive guidance on premarital agreements.

1. Formal Requirements.

A premarital agreement under the Texas Premarital Act must be in writing and signed by both parties and is enforceable without consideration. Tex. Fam. Code § 4.002. It may be amended or revoked after marriage only by an agreement in writing signed by both parties. Tex. Fam. Code § 4.005. A premarital agreement does not become effective until marriage.

2. Content.

Under the Texas Premarital Act, the parties are allowed to reach agreements on a number of issues, including (a) the rights and obligations of the parties in the property of either or both of them; (b) the rights to management and control of property, including, but not limited to, the rights to purchase, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber and dispose of property; (c) the disposition of the property of each or both parties on separation, divorce, annulment or other event of marital dissolution, death or any other event; (d) spousal support (including modification or elimination thereof); (e) provisions in wills, trusts, or other arrangement to carry out the premarital agreement; (f) the ownership rights and death benefits from a life insurance policy; (g) the choice of law governing the premarital agreement; and (h) any other matter not in violation of public policy or criminal statute. The parties may not contract, however, with respect to the right of child support. Tex. Fam. Code § 4.003.


The burden of proving that the premarital agreement is not enforceable is on the party attempting to set it aside (the “opposing party”). To be successful, the opposing party must prove (a) the opposing party did not execute the premarital agreement voluntarily or (b) the premarital agreement was unconscionable when it was executed, and prior to executing the premarital agreement, the opposing party (i) was not provided fair and reasonable disclosure of the property or financial obligations of the other party, (ii) did not voluntarily and expressly in writing waive any right to disclosure of the property or 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. Tex. Fam. Code § 4.006(a). Assuming that
the formal requirements are carried out in signing the premarital agreement, the remedies and defenses set forth above are exclusive, including common law. Tex. Fam. Code § 4.006(c).

In order to address the issues of the voluntary nature of the agreement and unconscionability, attorneys drafting premarital agreements typically require independent legal counsel for each party and evidence the exchange of financial information by attaching schedules of property and liabilities as exhibits to the premarital agreement. It is also advisable for the parties and their attorneys to exchange and review income tax returns of the parties for the last few years (particularly where income or earnings are included as separate property). Finally, it is advisable to have each party sign a written waiver of disclosure of financial information beyond the disclosure provided in the agreement (the "Waiver of Disclosure of Financial Information") prior to signing a premarital agreement. Attached as Appendix A are Specimen Forms of Waivers of Disclosure of Financial Information.


It appears that a premarital agreement can provide that post-marriage income on each spouse's separate property will continue to be the separate property of that spouse. The Texas Premarital Act defines the term "property" to mean "an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings." Tex. Fam. Code § 4.001(2) (emphasis added). Again, the Texas Constitution authorizes "persons about to marry and spouses" to enter into partition or exchange agreements, but only uses the term "spouses" with reference to agreeing that income from each spouse's separate property shall continue to be separate property of that spouse. Tex. Const. art. XVI, § 15. Is this omission intended or of any consequence? Probably not, since a premarital agreement is not effective until marriage and the parties are then spouses. Tex. Fam. Code § 4.004. Nevertheless, in order to circumvent such "Constitutional Argument" (herein so called) with regard to separate income, (a) it would be advisable to include words of partition or exchange in the premarital agreement and (b), if possible, it may be advisable to have both spouses reexecute the premarital agreement or execute an instrument ratifying and republishing the premarital agreement after the marriage ceremony (the "Ratification Agreement"). See Chiles v. Chiles, 779 S.W.2d 127 (Tex. App.--Houston, [14th Dist.] 1989); Fanning v. Fanning, 828 S.W.2d 135 (Tex. App.--Waco 1992) aff'd in part and remanded on other grounds, 847 S.W.2d 225 (Tex. 1993). Attached as Appendix B is a Specimen Form of Standard Premarital Agreement (herein so called) that includes the drafting suggestions discussed above and provides for income on separate property of each spouse to be the separate property of that spouse, but does not include earnings of either spouse as separate property.

5. Opt-Out Premarital Agreement.

Until recently, it was unclear whether a premarital agreement could validly provide that each spouse's earnings could be that spouse's separate property. The literal language of the Texas Premarital Act validates this arrangement by including "earnings" within the definition of "property" subject to premarital agreements. See Tex. Fam. Code § 4.001(2). The same drafting advice discussed above with respect to a Standard Premarital Agreement would also be advisable to address the Constitutional Argument in a premarital agreement that includes earnings of each spouse as well as income on separate property as the separate property of that spouse and, in essence, opt-outs of the community property system (the "Opt-Out Agreement"). But what if one spouse has no earnings and owns property of negligible value? These facts may raise issues of the voluntary nature or unconscionability of the Opt-Out Agreement and are typically addressed by the attorney representing a party negotiating for additional benefits for the less wealthy party. For a detailed discussion of these issues, see Featherston, "Premarital and Marital Agreements in Texas," State Bar of Texas Annual Advanced Drafting: Estate Planning and Probate Course 2003. Attached as Appendix C is a Specimen Form of Opt-Out Premarital Agreement (herein so called) that provides for income on separate property and earnings of each spouse to be the separate property of that spouse.

B. Marital Property Agreements.

1. Community to Separate by Agreement.

A married couple may partition or exchange community property then existing or to be acquired into separate property by written partition or exchange agreement ("marital partition or exchange agreement"). The Texas Constitution and the Texas Family Code provide additional authorization for spouses to agree that income or property of each spouse arising from separate property after marriage will be the separate property of that spouse. Tex. Const. art. XVI, § 15; Tex. Fam. Code § 4.103. Tex. Fam. Code § 4.102. The marital partition or exchange agreement must be in writing and not entered into with an intent to defraud existing creditors. Tex. Fam. Code §§ 4.102, 4.104, and 4.106(a); Recio v. Recio, 666 S.W.2d 645 (Tex. App.--Corpus Christi 1984, no writ). To assure that the marital partition or exchange agreement becomes effective against bona fide purchasers of the property, the agreement can also be recorded. Tex.
Fam. Code § 4.106(b). Beginning in September, 2003, income and future earnings on separate property received by a spouse under a valid marital partition or exchange agreement are the separate property of that spouse unless otherwise agreed to the contrary by both spouses. Tex. Fam. Code § 4.102. The drafting issues regarding burden of proof and remedies are similar in marital partition or exchange agreements as in premarital agreements. For a detailed discussion of the substantive legal issues concerning marital partition or exchange agreements between spouses, see Featherston, supra.

2. **Separate to Community by Agreement.**

   Effective January 1, 2000, spouses can agree in writing to convert their separate property to community property. Tex. Fam. Code § 4.202. The agreement must be in writing, signed by the spouses, identify the property being converted, specify that it is being converted to community property, and is enforceable without consideration. The mere transfer to the name of the other spouse or to the name of both spouses is not sufficient to convert the property to community property. Tex. Fam. Code § 4.203. The burden of proof under this arrangement also rests with the opposing party and is premised upon the lack of voluntary execution or fair and reasonable disclosure. The Texas Family Code provides a lengthy warning that creates a rebuttable presumption of “fair and reasonable disclosure” and should be included in the agreement. See Tex. Fam. Code § 4.205. If the value of the property to be converted from separate to community is substantial, independent legal counsel would be advisable for both parties. Attached as Appendix D is a Specimen Form of Standard Agreement to Convert Separate Property to Community Property.

III. **CASE STUDIES IN DRAFTING PREMARITAL PROPERTY AGREEMENTS.**

A. **The Case of the Perfect Second Marriage (Opt-Out Premarital Agreement).**

   1. **Jack.**

      Jack Jones, age 65, is the president of ABC Printing, Inc. (“ABC”), a family business that he and his wife, Mary, founded together 40 years ago. ABC went public ten years ago. Jack has been married only once. Mary died eight years ago. Jack and Mary had three children, Jack, Jr. (age 40), Jennifer (age 38), and Jordan (age 35). Jack has six grandchildren. Jack’s assets are valued at $12 million and are comprised of real estate worth $3 million, marketable securities and cash worth $5 million, cash value of life insurance worth $1 million (face amount of $3 million), vested retirement plan and individual retirement account benefits worth $2 million, and miscellaneous tangible personal property worth $1 million. In addition, Jack has beneficial interests in trusts established at Mary’s death worth $8 million. Years ago, Jack and Mary also established (i) an irrevocable life insurance trust that owns a $10 million second to die policy on Jack and Mary and (ii) irrevocable gift trusts for children and grandchildren. Jack has been contributing over $90,000 annually to these trusts for the past five years and plans to continue this practice. His annual income is approximately $1 million.

   2. **Jill.**

      Jill Martin, age 62, has recently taken early retirement as senior legal counsel at a major oil company. She is currently of counsel to a large law firm, plans to work for up to five more years (primarily in client development) and wants to travel more for pleasure than business in the future. Jill has been married only once. Her husband, Mike Martin, was a successful investment banker who died unexpectedly seven years ago. Jill has two daughters, Janet (age 35) and Jerrie (age 30). Jill has four grandchildren. Jill’s assets are valued at $15 million and are comprised of real estate worth $2 million, marketable securities and cash worth $7 million, individual retirement rollover accounts from her and Mike’s employment worth $4 million, and miscellaneous tangible personal property worth $2 million. Jill’s annual income is approximately $800,000. In addition, Jill has beneficial interests in trusts established at Mike’s death worth $15 million and a beneficial interest in an irrevocable life insurance trust (established by Mike with his separate property partitioned funds) comprised of marketable securities and cash worth $8 million. Jill has also been contributing over $60,000 dollars a year for the past four years to irrevocable gift trusts for her children and grandchildren and plans to continue this practice.

   3. **The Issues.**

      Jack and Mary met Mike and Jill many years ago at their country club and Jack and Jill have been dating for the past four years. They have decided to marry. The one consideration that has caused them concern and delayed their wedding is financial. They have heard countless stories about friends who have married later in life only to cause financial problems for them or their families. They simply do not want to enter into a marriage that ends in divorce or death and results in complications or family strife on the division of property. They are also somewhat concerned about potential creditor problems for either one of them due to the actions of the other.

   4. **The Proposed Solution.**

      Jack calls his attorney, S. Tate Planner (“Tate”) and explains his and Jill’s plans for and concerns about
marriage. Tate finds the situation almost too good to be true. Finally, a perfect case for the 1980 Constitutional Amendment and the Texas Premarital Act. Tate suggests that Jack enter into an Opt-Out Premarital Agreement, including the terms set forth below.

5. **Jack’s Basic Benefits, Rights, and Duties Under the Opt-Out Premarital Agreement.**
   a. **Jack’s Property Will Remain Jack’s Separate Property.**
   All property owned by Jack before the marriage or acquired by Jack during the marriage by gift or inheritance will be Jack’s separate property.
   b. **Income, Revenues, and Appreciation are Separate Property.**
   Income and other revenues from Jack’s separate property (e.g., dividends, rents, interest, trust distributions, and partnership distributions), and appreciation in value of Jack’s separate property will be Jack’s separate property.
   c. **Purchases or Exchanges.**
   Any property purchased with or exchanged for Jack’s separate property will be Jack’s separate property.
   d. **Earnings.**
   All compensation Jack receives for personal services such as salary, bonuses, commissions, and/or director’s fees, including stock options and other benefits accrued and payable under qualified and non-qualified employee benefit plans, will be Jack’s separate property.
   e. **Debts.**
   All monies owed by Jack at the time of the marriage and all debts incurred by Jack during the marriage will be Jack’s separate debts and Jill will not be liable for those debts unless Jack agrees, in writing, to be liable.

6. **Jill’s Basic Benefits, Rights, and Duties Under the Opt-Out Premarital Agreement.**
   a. **Jill’s Property Will Remain Jill’s Separate Property.**
   All property owned by Jill before the marriage or acquired by Jill during the marriage by gift or inheritance will be Jill’s separate property.
   b. **Income, Revenues, and Appreciation are Separate Property.**
   Income and other revenues from Jill’s separate property and appreciation in value of Jill’s separate property will be Jill’s separate property.
   c. **Purchases or Exchanges.**
   Any property purchased with or exchanged for Jill’s separate property will be Jill’s separate property.
   d. **Earnings.**
   All compensation Jill receives for personal services such as salary, bonuses, commissions, and/or director’s fees, including stock options and other benefits accrued and payable under qualified and non-qualified employee benefit plans, will be Jill’s separate property.
   e. **Debts.**
   All monies owed by Jill at the time of the marriage and all debts incurred by Jill during the marriage will be Jill’s separate debts and Jack will not be liable for those debts unless Jill agrees, in writing, to be liable.

7. **Special Considerations to Support the Opt-Out Premarital Agreement.**
   a. **Reimbursement and Contribution.**
   All rights to reimbursement and contribution for amounts paid by one party on the property or debt of the other party are waived.
   b. **Mutual Support.**
   Amounts paid by either party for living expenses of the parties will not be traced or subject to reimbursement.
   c. **Full Disclosure of Assets and Liabilities.**
   Each party should fully disclose to the other party (through his or her attorney), via exhibits attached to the agreement, each party’s assets and liabilities. Further, prior to signing the premartial agreement, each party should sign a Waiver of Disclosure of Financial Information beyond the disclosure provided.
   d. **Income Tax Returns for Past Three Years.**
   Each party should provide to the other party (through his or her attorney) copies of that party’s federal income tax returns for the past three years for review and consideration.
   e. **Independent Counsel.**
   Each party should be represented by separate legal counsel.

B. **The Case of the Young Heiress (Standard Premarital Agreement with Separate Property Conversion).**

1. **Jackie.**
Jacqueline Price (“Jackie”), age 24, moved to Texas after graduation from college two years ago. She is a member of the faculty of an exclusive preparatory school...
for girls. Jackie is also the granddaughter of the founder of one of the largest pharmaceutical companies in the United States. Jackie is single and has never been married. The net value of Jackie’s personal assets is $5 million and her assets are comprised of a residence worth $300,000 (subject to a mortgage of $250,000), marketable securities and cash worth $4.5 million (most of which are held in a revocable living trust Jackie established with her father as trustee at the suggestion of her parents on her 21st birthday), and miscellaneous tangible personal property worth $450,000. In addition, Jackie has beneficial interests in four irrevocable trusts established by her grandparents with a total value of $8 million. Her annual income from teaching is $45,000 and her average annual income from trust distributions is $150,000.

2. **Johnny.**

John Works (“Johnny”), age 26, is a commercial real estate broker who graduated from S.M.U. four years ago when jobs were actually available in Dallas for college graduates.  Johnny is from a modest background, is single, and has never been married. He worked part-time at the real estate firm while attending college.  Johnny’s assets are valued at $100,000 and are comprised of cash worth $70,000 and miscellaneous tangible personal property worth $30,000.  Johnny earned commissions of $150,000 last year, most of which were used to pay off the last of his student loans.

3. **The Issues.**

Jackie and Johnny met shortly after Jackie arrived in Dallas, have been engaged for three months, and plan to marry three months from now.  In a recent visit with Jackie’s parents, Jackie’s father made it clear to Johnny that, if Johnny is to marry his daughter, Johnny will be expected to support her and, for the near future, her trust fund distributions will likely be minimal.  Johnny has no problem with his future father-in-law’s approach. However, he is in the real estate business and is somewhat concerned about making the house payments (or sharing in the house payments) and having all the equity flow to Jackie as her separate property.

4. **The Proposed Solution.**

Jackie and Johnny visit with their respective attorneys and settle on a Standard Premarital Agreement. Under the Standard Premarital Agreement, their separate properties are identified and maintained as separate, along with the income, revenues, and growth of their respective separate properties, while earnings (and any income, revenues, and growth arising from earnings) will be community property. In addition, Jackie and Johnny will agree to convert Jackie’s residence from separate property to community property promptly after marriage (subject to the assumption of the mortgage indebtedness on Jackie’s residence by Jackie and Johnny as their joint and several liability). The terms of their premarital property agreement are set forth below.

5. **Jackie’s Basic Benefits, Rights, and Duties Under the Standard Premarital Agreement.**

a. Jackie’s Property Will Remain Jackie’s Separate Property.

    All property owned by Jackie before the marriage or acquired by Jackie during the marriage by gift or inheritance will be Jackie’s separate property.

b. Income, Revenues, and Appreciation are Separate Property.

    Income and other revenues from Jackie’s separate property and appreciation in value of Jackie’s separate property will be Jackie’s separate property.

c. Purchases or Exchanges.

    Any property purchased with or exchanged for Jackie’s separate property will be Jackie’s separate property.

d. Earnings.

    All compensation Jackie receives for personal services such as salary, bonuses, commissions, and/or director’s fees, will be community property.

e. Debts.

    Except for the special arrangements concerning Jackie’s residence, all monies owed by Jackie at the time of the marriage and all debts incurred by Jackie during the marriage will be Jackie’s separate debts and Johnny will not be liable for those debts unless Johnny agrees, in writing, to be liable.


    All property owned by Johnny before the marriage or acquired by Johnny during the marriage by gift or inheritance will be Johnny’s separate property.

b. Income, Revenues, and Appreciation are Separate Property.

    Income and other revenues from Johnny’s separate property and appreciation in value of Johnny’s separate property will be Johnny’s separate property.
c. Purchases or Exchanges.
   Any property purchased with or exchanged for Johnny’s separate property will be Johnny’s separate property.

d. Earnings.
   All compensation Johnny receives for personal services such as salary, bonuses, commissions, and/or director’s fees, will be community property.

e. Debts.
   Except for the special arrangements concerning Jackie’s residence, all monies owed by Johnny at the time of the marriage and all debts incurred by Johnny during the marriage will be Johnny’s separate debts and Jackie shall not be liable for those debts unless Jackie agrees, in writing, to be liable.

7. Special Arrangements Concerning Jackie’s Residence under the Standard Premarital Agreement.
   Jackie and Johnny agree that, promptly after marriage, Jackie’s separate property residence will be converted to community property subject to the assumption of the mortgage indebtedness as a joint and several liability of Jackie and Johnny. Further, Jackie and Johnny agree that, upon the refinancing of the mortgage indebtedness, they will sign the necessary documents to cause the refinanced mortgage indebtedness to be community debt.

   a. Reimbursement and Contribution.
      All rights to reimbursement and contribution for amounts paid by one party (separate or community) on the property or debt of the other party (separate or community) are waived.
   b. Mutual Support.
      Amounts paid by either party for living expenses of the parties will not be traced or subject to reimbursement.
      Each party should fully disclose to the other party (through his or her attorney), via exhibits attached to the agreement, each party’s assets and liabilities. Further, prior to signing the premarital agreement, each party should sign a Waiver of Disclosure of Financial Information beyond the disclosure provided.
   d. Income Tax Returns for Past Three Years.
      Each party should provide to the other party (through his or her attorney) copies of that party’s federal income tax returns for the past three years for review and consideration.
   e. Independent Counsel.
      Each party should be represented by separate legal counsel.

Attached as Appendix E are Sample Provisions for Separate to Community Property Conversion (with Assumption of Mortgage Indebtedness) in a Standard Premarital Agreement. Attached as Appendix F is a Specimen Form of Agreement to Convert Separate Property to Community Property (with Assumption of Mortgage Indebtedness).

   1. Howard.
      Howard Bigg, age 75, is the former president and CEO and the current major stockholder of Bigg Oil Company (“Bigg Oil”), a privately-held family business that he and his deceased wife, Evelyn, began together 50 years ago. Howard has been married only once, to Evelyn. Evelyn died 15 years ago. Howard and Evelyn had two children, Howard, II (also known as “Junior”, age 52) and Pierce (age 48). Junior has been married three times, is now single, and lives in California on diminishing funds from a life insurance trust created by his mother. Pierce is still married to his first wife, has three children, and is now the President of Bigg Oil. Howard’s assets are valued at $350 million and are comprised of real estate worth $60 million (including a residence he recently purchased in a gated community worth $3 million), marketable securities and cash worth $250 million, cash value of life insurance worth $10 million (face amount of $20 million), nonqualified deferred compensation and individual retirement account benefits worth $20 million, and miscellaneous tangible personal property worth $10 million. His annual income is approximately $10 million.

   2. Anna.
      Anna Nicole Smartt, age 30, lists her occupation as “Senior Manager” at the Northwest Gentleman’s Club (the “Club”). Anna has been married four times, none of which marriages lasted longer than two years. Anna is currently single and has no children. Anna’s assets are valued at $150,000 and are comprised of cash of $50,000 dollars and miscellaneous tangible personal property worth $100,000 (primarily an automobile worth $40,000
and jewelry worth $50,000). Anna lives in an apartment near the Club. Her annual income last year was $75,000.

3. **The Issues.**

Howard met Anna eight months ago at the Club. Howard’s recollection is that he was invited to a Rotary Club Dinner by a retired friend and turned left on Northwest Highway instead of right. When he entered the Club looking for directions, he was met by Anna at the door. It was love at first sight. Howard has since become a regular at the Club, Anna has become a regular at Howard’s home, and they plan to marry in the next six months. Upon hearing of their plans, Pierce is devastated. He and a host of Howard’s friends attempt to talk Howard out of the wedding, to no avail. However, Pierce is able to convince his father to see his father’s attorney, Tate, and not to enter into any marriage without a premarital agreement. Howard agrees, since he has been reading about a Houston estate case with similar facts that did not include a premarital property agreement. After visiting with Howard, Tate finds the situation challenging to say the least. Tate summarizes the concept of the Opt-Out Premarital Agreement to Howard and prepares a first draft along the lines that he had recently completed for another client, Jack Jones. Tate also suggests that Howard create and fund a revocable management trust with the bulk of his property, to be co-trusted by Howard and/or another individual or a corporate fiduciary.

4. **The Proposed Plan.**

Tate asks Howard to visit with Anna and obtain the name and address of Anna’s attorney so Tate can provide a draft of the Opt-Out Premarital Agreement to Anna’s attorney. The following day Tate receives a call from Howard with the information on Anna’s attorney, Lisa Mae Su (“Lisa”). Tate has heard of Lisa, a well known family lawyer, and sends the draft to Lisa. Not surprisingly, Lisa is not very enthusiastic about the first draft of the Opt-Out Premarital Agreement and tells Tate that the two of them have a lot of negotiating ahead of them before she could recommend that her client enter into any such agreement. Tate is also concerned about Anna living up to her commitments under any agreement and/or writing a book (or even worse, appearing on television) to expose Howard and his money. Lisa is concerned about Pierce and/or Junior attempting to set aside any agreement they settle on and/or control Howard’s money. After a month of negotiations, Tate, Lisa, and their respective clients settle on a modified Opt-Out Premarital Agreement (herein so called) that provides Anna with cash payments on divorce or death and contractual will provisions. They also agree to include provisions for an independent fiduciary to carry out the contractual will provisions for Anna and confidentiality provisions concerning financial terms of the premarital agreement. Finally, Howard and Anna agree to seek a declaratory judgment as to the validity of the premarital agreement between the signing date and the date of marriage.

5. **Howard’s Basic Benefits, Rights, and Duties Under the Modified Opt-Out Premarital Agreement.**

a. **Howard’s Property Will Remain Howard’s Separate Property.**

All property owned by Howard before the marriage or acquired by Howard during the marriage by gift or inheritance will be Howard’s separate property.

b. **Income, Revenues, and Appreciation are Separate Property.**

Income and other revenues from Howard’s separate property and appreciation in value of Howard’s separate property will be Howard’s separate property.

c. **Purchases or Exchanges.**

Any property purchased with or exchanged for Howard’s separate property will be Howard’s separate property.

d. **Earnings.**

All compensation Howard receives for personal services such as salary, bonuses, commissions, partnership draws and distributions, and/or director’s fees, including benefits accrued and payable under qualified and non-qualified employee benefit plans, will be Howard’s separate property.

e. **Debts.**

All monies owed by Howard at the time of the marriage and all debts incurred by Howard during the marriage will be Howard’s separate debts and Anna will not be liable for those debts unless Anna specifically agrees, in writing, to be liable.

6. **Anna’s Basic Benefits, Rights, and Duties Under the Modified Opt-Out Premarital Agreement.**

a. **Anna’s Property Will Remain Anna’s Separate Property.**

All property owned by Anna before the marriage or acquired by Anna during the marriage by gift or inheritance will be Anna’s separate property.
b. Income, Revenues and Appreciation are Separate Property.

Income and other revenues from Anna’s separate property and appreciation in value of Anna’s separate property will be Anna’s separate property.

c. Purchases or Exchanges.

Any property purchased with or exchanged for Anna’s separate property will be Anna’s separate property.

d. Earnings.

All compensation Anna receives for personal services such as salary, bonuses, commissions, and/or director’s fees, including benefits accrued and payable under qualified and non-qualified employee benefit plans, will be Anna’s separate property.

e. Debts.

All monies owed by Anna at the time of the marriage and all debts incurred by Anna during the marriage will be Anna’s separate debts and Howard will not be liable for those debts unless Howard agrees, in writing, to be liable.

7. Special Arrangements on Divorce or Death Under the Modified Opt-Out Premarital Agreement.

a. Cash Payments if Howard and Anna Are Divorced and Anna Filed the Petition.

If Anna files a petition for divorce, then when the divorce is final, Howard will make the payments to Anna as set forth below, depending on the length of the marriage at the time of the petition.

(1) Married 3 years or less: Cash payment of $2 million.

(2) Married more than 3 years but not more than 5 years: Cash payment of $5 million.

(3) Married more than 5 years but not more than 10 years: Cash payment of $8 million.

(4) Married more than 10 years: Cash payment of $15 million.

b. Cash Payments if Howard and Anna Are Divorced and Howard Personally Filed the Petition.

If Howard files a petition for divorce, then when the divorce is final, Howard will make payments to Anna as set forth below, depending on the length of the marriage at the time of the petition. These payment provisions shall only apply if Howard personally files the petition.

They will not apply if the petition is filed by Howard’s guardian, conservator, or similar fiduciary, or if filed in Howard’s behalf by a third party under a power of attorney.

(1) Married 5 years or less: Cash payment of $5 million.

(2) Married more than 5 years but not more than 10 years: Cash payment of $10 million.

(3) Married more than 10 years: Cash payment of $20 million.

c. Gifts if Howard Dies Survived by Anna with No Petition for Divorce Pending.

At Howard’s death survived by Anna by more than 30 days with no petition for divorce pending, Anna will receive (i) Howard’s Texas residence (free of debt), (ii) the car Anna is driving (free of debt), and a lump sum cash gift equal to $20 million minus the date of death fair market values of the Texas residence (free of debt) and Anna’s car (free of debt). Also, in partial satisfaction of the lump sum cash gift, Anna will receive $40,000 per month in “monthly payments” commencing within 60 days after Howard’s death and continuing until all of Anna’s benefits described above are received by Anna.

d. Provisions for Anna if Howard and Anna are Divorced and The Petition was Filed by Howard’s Guardian, Conservator, or Agent under a Written Power of Attorney.

If the initial petition for divorce is filed by Howard’s guardian, conservator or agent under a written power of attorney (other than Anna), then Anna will receive the same benefits she would have been entitled to at Howard’s death.

e. Howard Will Appoint Independent Party to Carry Out Terms of Agreement.

Howard will appoint an independent party (not related or subordinate to Howard) to carry out the terms of the premarital agreement at Howard’s death. This will be an independent executor or a trustee of Howard’s revocable trust depending on the approach Howard uses in his estate plan. This independent party may be an individual or entity so long as the party is not related or subordinate to Howard.


Howard is required to include contractual will provisions in his estate plan to carry out the terms of his agreements on death.
8. Special Considerations to Support the Modified Opt-Out Premarital Agreement.
   a. Reimbursement and Contribution.
      All rights to reimbursement and contribution for amounts paid by one party on the property or debt of the other party are waived.

   b. Mutual Support.
      Amounts paid by either party for living expenses of the parties will not be traced or subject to reimbursement.

   c. Declaratory Judgment.
      Howard and Anna agree to seek a declaratory judgment validating the premarital agreement between the date of the signing of the agreement and the date of marriage.

      Each party should fully disclose to the other party (through his or her attorney), via exhibits attached to the agreement, each party’s assets and liabilities. Further, before the Premarital Agreement is signed, each party will sign a Waiver of Disclosure of Financial Information beyond the disclosure provided.

   e. Confidentiality Provisions.
      Howard and Anna agree to confidentiality provisions to protect their financial disclosure from the public.

   f. Income Tax Returns for Past Three Years.
      Each party should provide to the other party (through his or her attorney) copies of that party’s federal income tax returns for the past three years for review and consideration.

   g. Independent Counsel.
      Each party should be represented by separate legal counsel.

Attached as Appendix G are Sample Provisions for Cash Payments on Divorce or Death, Contractual Will Requirements, Declaratory Judgment, and Confidentiality in Opt-Out Premarital Agreement. Attached as Appendix H are Specimen Forms of Petition for Declaratory Judgment and Declaratory Judgment.
APPENDIX A
Specimen Forms
Waivers of Disclosure of Financial Information

WAIVER OF DISCLOSURE OF FINANCIAL INFORMATION
[NAME OF WIFE]

I, [NAME OF WIFE], intend to marry [NAME OF HUSBAND]. We have agreed to enter into a Premarital Property Agreement. [NAME OF HUSBAND] has provided (1) the disclosure of assets and liabilities as set forth on the attached Schedules A and B (attached hereto and incorporated herein by reference) and (2) copies of the U.S. Individual Income Tax Returns (Form 1040) of [NAME OF HUSBAND] for the years 20___ through 20___. I hereby voluntarily and expressly waive the right to any further disclosure beyond the disclosure provided herein to the fullest extent allowed by Texas law.

Dated this _____ day of _________________, 20___.

[NAME OF WIFE]

CERTIFICATE OF ATTORNEY

I, [W-ATTORNEY-NAME], certify that I am an attorney at law, duly licensed and admitted to practice in the State of Texas and that I have been employed by [NAME OF WIFE] to advise her with respect to this Waiver of Disclosure of Financial Information. I have explained to her the meaning and legal effects of this Waiver of Disclosure of Financial Information. [NAME OF WIFE] has acknowledged to me her full and complete understanding of this Waiver of Disclosure of Financial Information and its legal consequences and has freely and voluntarily executed this Waiver of Disclosure of Financial Information.

________________________________________
[W-ATTORNEY-NAME]
State Bar No. ______________

STATE OF TEXAS
§

COUNTY OF _________
§

BEFORE ME, the undersigned authority, on this day personally appeared [NAME OF WIFE], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this _____ day of _________________, 20___.

________________________________________
Notary Public in Texas
My Commission Expires: _________________
## Schedule A

**Separate Property of [Name of Husband]**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description of Asset</th>
<th>Approximate Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Stocks and Bonds:</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Cash and Notes:</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Corporate Employee Benefit Plans:</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Real Estate:</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Mineral Interests:</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Life Insurance Policies:</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Automobiles:</td>
<td></td>
</tr>
</tbody>
</table>
8. All household goods, jewelry, clothing, furniture, fixtures, objects of art, equipment, and all other tangible personal property of a nature and use similar to the foregoing, in and about [H-Residence-Address] as of the date of execution of this Agreement.

SIGNED FOR IDENTIFICATION:

_____________________________________________
[NAME OF HUSBAND]

_____________________________________________
[NAME OF WIFE]
### SCHEDULE B

**LIABILITIES OF [NAME OF HUSBAND]**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF LIABILITY</th>
<th>APPROXIMATE AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td>$_________</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>_________</td>
</tr>
</tbody>
</table>

**SIGNED FOR IDENTIFICATION:**

[NAME OF HUSBAND]

[NAME OF WIFE]
WAIVER OF DISCLOSURE OF FINANCIAL INFORMATION

I, [NAME OF HUSBAND], intend to marry [NAME OF WIFE]. We have agreed to enter into a Premarital Property Agreement. [NAME OF WIFE] has provided (1) the disclosure of assets and liabilities as set forth on the attached Schedules A and B (attached hereto and incorporated herein by reference) and (2) copies of the U.S. Individual Income Tax Returns (Form 1040) of [NAME OF WIFE] for the years 20___ through 20___. I hereby voluntarily and expressly waive the right to any further disclosure beyond the disclosure provided herein to the fullest extent allowed by Texas law.

Dated this _____ day of _________________, 20___.

[NAME OF HUSBAND]

CERTIFICATE OF ATTORNEY

I, [H-ATTORNEY-NAME], certify that I am an attorney at law, duly licensed and admitted to practice in the State of Texas and that I have been employed by [NAME OF HUSBAND] to advise him with respect to this Waiver of Disclosure of Financial Information. I have explained to him the meaning and legal effects of this Waiver of Disclosure of Financial Information. [NAME OF HUSBAND] has acknowledged to me his full and complete understanding of this Waiver of Disclosure of Financial Information and its legal consequences and has freely and voluntarily executed this Waiver of Disclosure of Financial Information.

[H-ATTORNEY-NAME]
State Bar No. ______________

STATE OF TEXAS §

COUNTY OF _______ §

BEFORE ME, the undersigned authority, on this day personally appeared [NAME OF HUSBAND], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this _____ day of _________________, 20___.

Notary Public in Texas
My Commission Expires: ______________________
SCHEDULE A

SEPARATE PROPERTY OF [NAME OF WIFE]

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF ASSET</th>
<th>APPROXIMATE VALUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Stocks and Bonds:</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Cash and Notes:</td>
<td></td>
</tr>
<tr>
<td>3</td>
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<td></td>
</tr>
<tr>
<td>7</td>
<td>Automobiles:</td>
<td></td>
</tr>
</tbody>
</table>
8. All household goods, jewelry, clothing, furniture, fixtures, objects of art, equipment, and all other tangible personal property of a nature and use similar to the foregoing, in and about [W-Residence-Address] as of the date of execution of this Agreement.

SIGNED FOR IDENTIFICATION:

____________________________________________
[NAME OF HUSBAND]

____________________________________________
[NAME OF WIFE]
## SCHEDULE B

**LIABILITIES OF [NAME OF WIFE]**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF LIABILITY</th>
<th>APPROXIMATE AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td>$__________</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>___________</td>
</tr>
</tbody>
</table>

SIGNED FOR IDENTIFICATION:

______________________________

[NAME OF HUSBAND]

______________________________

[NAME OF WIFE]
APPENDIX B
Specimen Form
Standard Premarital Agreement

PREMARITAL PROPERTY AGREEMENT

between

[NAME OF HUSBAND]

and

[NAME OF WIFE]

DATE: ______________________
PREMARITAL PROPERTY AGREEMENT

This is a Premarital Property Agreement (the “Agreement”) by and between [NAME OF HUSBAND] ("[H-Name]") and [NAME OF WIFE] ("[W-Name]"). [H-Name] and [W-Name] are sometimes referred to in this Agreement collectively as the "parties" and individually as a "party" or "spouse."

RECITALS

A. [H-Name] and [W-Name] are planning to be married to each other on [Marriage-Date].

B. Each of [H-Name] and [W-Name] owns certain separate properties and each of [H-Name] and [W-Name] believes it will be in his or her best interest to prevent any confusion over the characterization of his or her respective separate properties upon the termination of their marital relationship. Accordingly, each of [H-Name] and [W-Name] will herein identify his or her respective separate properties and will also agree that the income, increases in value, or other property arising from such separate properties will be and forever remain a part of such separate properties.

C. Each of [H-Name] and [W-Name] has also decided that the respective separate properties of each of them shall not be liable for or become obligated for the payment of the indebtedness of the other except to the extent that a spouse specifically grants his or her authorization therefor.

D. Each of [H-Name] and [W-Name] has been advised of and each understands that by entering into this Agreement each party to this Agreement may permanently surrender claims he or she would otherwise have under Texas law to income or property derived from separate property of his or her spouse.

NOW, THEREFORE, for and in consideration of the premises and the mutual benefits to accrue to [H-Name] and [W-Name], and for other good and valuable consideration, the receipt and sufficiency of which are hereby confirmed and acknowledged by both parties, [H-Name] and [W-Name] hereby enter into the following agreements in accordance with Section 15, Article XVI of the Texas Constitution, as amended, and Sections 4.001 through 4.010 of the Texas Family Code, as amended.

AGREEMENT

ARTICLE I

INTRODUCTORY STIPULATIONS, AGREEMENTS, AND CERTAIN DEFINITIONS

1.1 Domicile. [H-Name] stipulates that he is domiciled in the City of ________________, ________________ County, Texas. [W-Name] stipulates that she is domiciled in the City of ________________, ________________ County, Texas.

1.2 Children. [H-Name] has ____ (___) children by a previous marriage, _________________. [W-Name] has ____ (___) children by a previous marriage, _________________.

1.3 Disclosure. Each party has disclosed to the other the nature, extent, and probable value of all of his or her property. The parties agree that the probable values so disclosed are not a material or significant factor influencing either party to enter into this Agreement and neither the omission of any asset nor any error or mistake in the probable current value of any asset shall affect the validity of this Agreement. Each party
has been provided a fair and reasonable opportunity to obtain further disclosure of the property and financial obligations of the other party. Furthermore, each party acknowledges that, prior to the execution of this Agreement, he or she has executed a Waiver of Disclosure of Financial Information whereby each party has voluntarily and expressly waived any right to disclosure of the property or financial obligations of the other party beyond the disclosure herein provided.

1.4 Valuations Omitted. To the extent that the probable values of certain assets are omitted, the parties agree that such values are not a material or significant factor influencing either party to enter into this Agreement, nor shall such omissions affect the validity of this Agreement.

1.5 Intent to Define Property Rights. The parties to this Agreement have the intent and desire to define the respective rights of each in the property of the other after their marriage. The parties intend and desire that all property owned by either of them at the time of their marriage and all separate property that may or has come to either of them during their marriage be clearly identified as their separate property, and that such property will be preserved to each of them during their marriage for purposes of management, liability, ownership, accounting, and otherwise. It is each party's intent to retain and have sole management, control, and disposition of his or her separate property and of any revenue from his or her separate property.

1.6 Divorce or Termination of Marriage. All references in this Agreement to “divorce” shall mean and include the termination of the marital relationship by a suit for divorce or annulment or to declare a marriage void, or any other legal proceeding resulting in the dissolution of the marital relationship. All references in this Agreement to “termination of marriage” shall mean the dissolution of the marital relationship by divorce (as that term is defined above) or death.

ARTICLE II
OWNERSHIP OF PROPERTIES

2.1 Separate Property. All references to “separate property” shall include the items set forth below in this section.

A. Existing Separate Property. All properties, both real and personal, owned by a party as of the date of this Agreement shall be the separate property of that party.

B. Separate Property Acquired by Gift, Devise, or Inheritance. All properties which are at any time acquired by a party by gift, devise, or descent shall be and remain the separate property of that party.

C. Purchase, Sale, or Exchange of Property. All properties which are at any time acquired by a party by purchase with, sale of, or in exchange for that party's separate property shall be and remain the separate property of that party.

D. Separate Property Acquired by Debt. All properties which are at any time acquired by a party in exchange for obligations binding only on that party's separate property shall be and remain that party's separate property.

E. Increases in Value. All increases in value in a party's separate property, including, without limitation, all increases in value attributable to the time, toil, skill, efforts, and work of either party (or the agent of either party) shall be and remain the separate property of the spouse owning such separate property.

F. Personal Injury Recoveries. All recoveries that a party receives for personal injuries sustained by that party shall be and remain that party's separate property, including, without limitation,
that portion of the recoveries attributable to lost earnings capacity for personal injuries sustained by that party.

G. Revenues from Separate Property. All revenues from the separate property of a party shall be and remain the separate property of that party and shall be subject to the sole management, control, and disposition of that party. Without limitation by enumeration, the word "revenue" or "revenues" as used herein includes increase of livestock, growing crops, proceeds from the sale of oil, gas, and other minerals in and under or attributable to the property of a party (whether the property is fee title, royalty, overriding royalty, or working interest), rentals, delay rentals, dividends, and other distributions (whether in cash or in stock or other security or property) with respect to stock and partnership interests, distributions from trusts, interest earned on obligations, bank accounts, securities, certificates of deposit, and other sums owed or to be owing to the party. For the purpose of segregating the properties of the parties, it is agreed that the parties will establish and maintain accounting procedures, records, and bank accounts for the purpose of maintaining the separate character of their separate funds. However, failure to maintain accounting procedures, records and bank accounts shall not constitute, in whole or in part, a waiver by either party of any right, interest or claim of any nature whatsoever to which such party would otherwise be entitled under the provisions of this Agreement.

2.2 [H-Name]'s Separate Property. [H-Name] and [W-Name] hereby convey, partition, exchange, and set aside unto [H-Name], as his separate property, the following described properties (collectively, "[H-Name]'s Separate Property"):  

A. Existing Property. All property listed on Schedule A attached to this Agreement and incorporated herein by reference ("Schedule A");  

B. After-Acquired Property. All separate property acquired by [H-Name] after the date of this Agreement;  

C. Increases in Value of Separate Property. All increases in value of separate property owned by or acquired by [H-Name], including, without limitation, accumulations or increases in value thereon resulting from the time, toil, skill, efforts, and work of either party (or the agent of either party);  

D. Income and Mutations. All income on, increases in value of, and revenue or property from all or part of the property described in Subsections 2.2 A through C above, including, but not limited to, all income or revenue of whatever type earned thereon, all reinvestments and successive mutations of whatever nature thereof, all increases in value, and all income or revenue on such reinvestments, mutations, and increases in value.

[W-Name] understands that except for this Agreement, income on or revenue from [H-Name]'s Separate Property and increases in value of [H-Name]'s Separate Property attributable to [H-Name]'s skill, efforts, and work during the marriage may be community property or give rise to a claim of (i) reimbursement from or economic contribution to the separate estate of [H-Name] or (ii) enhancement of the value of the community property estate, and that by this Agreement such income, revenue, and increases in value are made and shall remain the separate property of [H-Name] without any such claims for reimbursement, economic contribution, or enhancement, which claims are hereby waived. Except as otherwise provided in this Agreement, [W-Name] shall never have, acquire, or claim any right or interest in any of [H-Name]'s Separate Property, whether during the marriage, during any period of separation, or at any time after the termination of the marital relationship unless [H-Name] specifically provides for [W-Name] to benefit from such property. If [W-Name] should acquire a community interest in any of [H-Name]'s Separate Property by operation of law, [W-Name] hereby agrees to give that community interest to [H-Name] as necessary to effectuate the intent of this Agreement.
Notwithstanding the foregoing, should [H-Name], subsequent to the execution of this Agreement, discover that [H-Name] omitted from Schedule A any property owned by [H-Name] on the date of this Agreement and prior to the date of [H-Name]'s and [W-Name]'s marriage, [H-Name] may, at [H-Name]'s option, notify [W-Name] and the parties shall undertake to execute, in accordance with Section 2.5 of this Agreement, an amendment to Schedule A describing the omitted properties and such Schedule A shall have like effect as though the omitted property had been set out on such Schedule A at the time of the execution of this Agreement. However, failure to amend Schedule A shall not constitute, in whole or in part, a waiver by [H-Name] of any right, interest or claim of any nature whatsoever to which [H-Name] would otherwise be entitled under the provisions of this Agreement.

2.3 [W-Name]'s Separate Property. [H-Name] and [W-Name] hereby convey, partition, exchange, and set aside unto [W-Name], as her sole and separate property, the following described properties (collectively, "[W-Name]'s Separate Property"):

A. Existing Property. All property listed on Schedule C attached to this Agreement and incorporated herein by reference ("Schedule C");

B. After-Acquired Property. All separate property acquired by [W-Name] after the date of this Agreement;

C. Increases in Value of Separate Property. All increases in value of separate property owned by or acquired by [W-Name], including, without limitation, accumulations or increases in value thereon resulting from the time, toil, skill, efforts, and work of either party (or the agent of either party);

D. Income and Mutations. All income, increases in value, revenue or property from all or part of the property described in Subsections 2.3 A through C above, including, but not limited to, all income or revenue of whatever type earned thereon, all reinvestments and successive mutations of whatever nature thereof, all increases in value, and all income or revenue on such reinvestments, mutations, and increases in value.

[H-Name] understands that except for this Agreement, income on or revenue from [W-Name]'s Separate Property and increases in value of [W-Name]'s Separate Property attributable to [W-Name]'s skill, efforts, and work during the marriage may be community property or give rise to a claim of (i) reimbursement from or economic contribution to the separate estate of [W-Name] or (ii) enhancement of the value of the community property estate, and that by this Agreement such income, revenue, and increases in value are made and shall remain the separate property of [W-Name] without any such claims for reimbursement, economic contribution, or enhancement, which claims are hereby waived. Except as otherwise provided in this Agreement, [H-Name] shall never have, acquire, or claim any right or interest in any of [W-Name]'s Separate Property, whether during the marriage, during any period of separation, or at any time after the termination of the marital relationship unless [W-Name] specifically provides for [H-Name] to benefit from such property. If [H-Name] should acquire a community interest in any of [W-Name]'s Separate Property by operation of law, [H-Name] will give that community interest to [W-Name] as necessary to effectuate the intent of this Agreement.

Notwithstanding the foregoing, should [W-Name], subsequent to the execution of this Agreement, discover that [W-Name] omitted from Schedule C any property owned by [W-Name] on the date of this Agreement and prior to the date of [H-Name]'s and [W-Name]'s marriage, [W-Name] may, at [W-Name]'s option, notify [H-Name] and the parties shall undertake to execute, in accordance with Section 2.5 of this Agreement, an amendment to Schedule C describing the omitted properties and such Schedule C shall have like effect as though the omitted property had been set out on such Schedule C at the time of the execution of this Agreement. However, failure to amend Schedule C shall not constitute, in whole or in part, a waiver by [W-Name] of any
right, interest or claim of any nature whatsoever to which [W-Name] would otherwise be entitled under the provisions of this Agreement.

2.4 Community Property. This Agreement is not intended to change or alter the character of income or other mutations from community property or property purchased with community funds during the marriage of [H-Name] and [W-Name] or community property items such as salaries or other compensation for services. Except as otherwise provided herein or as otherwise provided under applicable state or federal law, the parties agree that earnings, whether present or deferred, and including benefits under employee benefit plans, remuneration, salaries, wages, or compensation from personal services accruing during the marriage and expressly identifiable as such (sometimes referred to herein as "Earnings"), together with all property acquired or income derived therefrom, shall be community property. Further, except as otherwise provided under applicable state or federal law, all employer or employee contributions made during this marriage to any retirement annuity contract, individual retirement account, profit sharing or pension plan or any other retirement savings arrangement held in the name of or on behalf of either [H-Name] or [W-Name], together with all future increment in value attributable to such contributions, whether by investment yield or capital appreciation, shall be community property. In addition, any separate property which a party has knowingly invested in community property shall be deemed to have become community property and all claims of the separate estate of the contributing party for reimbursement, economic contribution, or enhancement are hereby waived unless [H-Name] and [W-Name] otherwise agree in writing. Except as otherwise provided under this Agreement, each party agrees that he or she will only be entitled to, and will not assert any claims on community property in excess of, his or her one-half share of the community property acquired during the marriage.

2.5 Schedules. The parties agree to cooperate fully and to maintain records and accounts that will distinguish the separate estate of each and will attempt to avoid any commingling of separate income with other community income arising from the marriage. In this regard, it is contemplated (although it is not required) that [H-Name] and [W-Name] will annually agree to and attach schedules to this Agreement that list separate property hereinafter acquired by both parties, by gift, purchase, devise, or inheritance, regardless of the source and the manner of acquisition, and any mutations, income, and other properties acquired as a result of sale, reinvestment, or other disposition of the separate properties, or income derived from the separate properties, and any such properties listed on these schedules shall become a part of and be subject to the terms of this Agreement. Such schedules will be conclusive as to the character of the property listed thereon, and the parties agree never to take a contrary position. Notwithstanding the foregoing, the validity of this Agreement will not be affected by the failure of [H-Name] and [W-Name] to attach supplemental schedules to this Agreement, and the failure to list any additional separate property as part of this Agreement shall never be construed to mean that any additional separate property hereinafter acquired by a party is other than the separate property of that party. [H-Name] and [W-Name] (or their heirs, descendants, successors, or personal representatives) shall use their best efforts to trace all separate properties arising from income or mutation or other reinvestment of the properties listed on Schedules A and C hereto.

2.6 Partition and Exchange. As provided by Article XVI, Section 15, of the Texas Constitution and relevant sections of the Texas Family Code, [H-Name] and [W-Name] hereby partition between themselves their respective interests in what would (in absence of this Agreement) otherwise be community property acquired during their marriage, such that all of the property described in Section 2.2 of this Agreement shall automatically become [H-Name]'s Separate Property, as provided therein, and that all of the property described in Section 2.3 of this Agreement shall automatically become [W-Name]'s Separate Property, as provided therein, without the necessity of any further written instruments between the parties. [H-Name] and [W-Name] exchange between themselves all of the community interest of [H-Name] in [W-Name]'s Separate Property for all of the community interest of [W-Name] in [H-Name]'s Separate Property, whereupon the portion or interest described in Section 2.2 as [H-Name]'s Separate Property shall be and constitute the separate property and
estate of [H-Name] and the portion or interest described in Section 2.3 as [W-Name]'s Separate Property shall be and constitute the separate property and estate of [W-Name].

2.7 Waiver of Certain Rights and Benefits.

A. Marital Rights (Including Homestead). Each party hereby waives and releases any and all claims that a party may have against the other party (or against the other party's estate) that would otherwise arise as a result of the exempt property and family allowance laws of the State of Texas or any other applicable jurisdiction, and the rights of election against the party's last will and testament, including, without limitation, any claims of dower and curtesy (inchoate or otherwise), any rights to quasi community property under any law, now or hereafter in force, of the State of Texas or any other applicable jurisdiction, and the right to inherit as an heir-at-law under the intestacy statutes of the State of Texas or any other jurisdiction; provided, however, this provision shall not prevent a party from voluntarily making provisions for the other party, during lifetime or at death, but neither party is relying on the other party having made any of such provisions. In addition, each of [H-Name] and [W-Name] hereby expressly, knowingly and permanently waives any homestead rights that would be available to a surviving spouse under Texas law or the law of any other jurisdiction.

B. Alimony and Support. If either party files a petition for divorce, each party agrees that neither party shall seek, obtain, or accept permanent or temporary alimony, or temporary or other support (except child support, if applicable), against the other party and each party agrees that the consideration provided to each party under this Agreement shall be in lieu of any rights to alimony or temporary or permanent support, which each such party hereby waives.

C. Retirement Benefits. In addition, to the extent consistent with the terms of this Agreement and the requirements of the Retirement Equity Act of 1984, as amended from time to time (“REA”), each party agrees to execute such consents, as may be required to waive in writing all statutory rights, if any, which he or she may now have or may hereafter acquire by virtue of being a participant’s spouse or former spouse in any qualified plans that are governed by REA in which the other party is a participant and owns as his or her separate property under applicable State or Federal law. Such rights include, without limitation, rights to pre-retirement survivor annuities and joint and survivor annuities.

D. Reimbursement. Except to the extent necessary to comply with Article VI hereof, each spouse waives the right to assert any claim for reimbursement that he or she might have in the future against the separate property estate of the other spouse or the community property estate of both spouses.

E. Economic Contribution. Each spouse waives the right to assert any claim for economic contribution, as defined by the Texas Family Code, that he or she might have in the future against the separate property estate of the other spouse or the community property estate of both spouses.

ARTICLE III
LIABILITIES

3.1 Preexisting Liabilities. The liabilities listed on Schedule B attached to this Agreement and incorporated herein by reference (“Schedule B”) are [H-Name]'s separate liabilities and the liabilities listed on Schedule D attached to this Agreement and incorporated herein by reference (“Schedule D”) are [W-Name]'s separate liabilities. All of the separate liabilities and obligations (contingent and absolute) of the parties which exist at the date of this Agreement shall be enforceable against and discharged from the separate property of the party who incurred the same and shall not be enforceable against or dischargeable from the property of the other.
3.2 **Liabilities During the Marriage.** Unless otherwise specifically agreed to in writing, and except for support and maintenance obligations as provided in Article IV hereof, all debts and liabilities of the parties which are incurred or arise subsequent to the date of this Agreement in connection with the operation or management of separate property shall be separate property debts and liabilities, and shall be enforceable against and discharged solely from the separate property of the party incurring the same and shall not be enforceable against or dischargeable from the separate property of the other. Each spouse agrees to use his or her best efforts to see that any such debts are incurred on the basis that the creditor dealing with the spouse incurring such debts will agree to look only to the separate property of such spouse for recovery of such debt.

3.3 **Reciprocal Indemnity.** For the purpose of effectuating the provisions of Sections 3.1 and 3.2 above, each of the parties hereto, respectively, hereby agrees to save and hold the other party harmless from and to indemnify, out of the separate revenues and property of the indemnifying party, the other party against all liabilities and obligations heretofore or hereafter incurred by the indemnifying party unless such liability is incurred for the benefit of the community estate as evidenced by a written agreement to that effect or as provided in Article IV.

3.4 **Future Credit Transactions.** Recognizing the complexity of modern business credit transactions and each party desiring to allow the other to enter into such transactions without the other party's express approval or joinder, the parties make the following agreement respecting such future credit transactions: When either party enters into a transaction wherein credit is extended to that party or that party becomes liable or obligated for the repayment, contingent or otherwise, of credit extended by any third party, then such obligation or obligations shall be satisfied wholly from his or her separate property, and the party incurring such obligations shall hold such other party harmless from such obligation and indemnify him or her in the event he or she is ever required to satisfy same. In consideration of such agreement, each party agrees that the assets, if any, acquired through such credit transaction or transactions shall be and remain the separate property of the party obligating his or her separate property for the credit extended in acquiring same or resulting in the acquisition of same.

**ARTICLE IV**

**SUPPORT**

4.1 **Contribution of Separate Property for Mutual Support.** The parties agree that either or both [H-Name] and [W-Name] may, from time to time, contribute amounts of their respective separate property or income therefrom to an account (the “Household Account”) for the payment of ordinary and necessary items or expenses incurred in the mutual support of the parties to the extent community property may be insufficient or not readily available for such purposes. The separate funds so advanced may be deposited to the Household Account or to any joint or community bank accounts or expended directly for such purposes. The parties further agree that any such payment for their mutual support will not create a debt owing to or enhancement of the paying party's separate estate or a corresponding right of reimbursement from the Household Account or the parties' community estate or jointly held property, unless the parties expressly agree, in writing, to the contrary with respect to a particular payment or expense.

4.2 **Support of Children of This Marriage.** By entering into this Agreement, neither party is relieved of any obligation that party may have as a result of children born to or adopted of their marriage.

4.3 **No Duty to Support Spouse's Child.** [H-Name] and [W-Name] agree that during their marriage and upon the termination of their marriage for any cause, [W-Name] is under no duty or obligation to provide a home or support for the care and maintenance of the minor or incapacitated children of [H-Name] by a prior marriage, and [H-Name] is under no duty or obligation to provide a home or support for the care and maintenance of the minor or incapacitated children of [W-Name] by a prior marriage, regardless of the ages
of the children either at the time of the parties’ marriage or at the time of the termination of their marriage, except in the case of adoption of a child of one spouse by the other spouse.

ARTICLE V
MANAGEMENT

Each party hereto shall have the full, free, and unrestricted right to manage the separate property of that party including, without limitation, the right to convey or encumber the same, to dispose of same by sale, gift, or otherwise, and to deal with such property without taking into consideration any rights or interests of the other party hereto without joinder of the other party. If joinder of [H-Name] or [W-Name] ("joining party") should be required by law in connection with any document desired to be executed by the other party hereto with respect to the separate property of such other party upon request and from time to time, the joining party will execute any such instrument necessary to effectuate the desires of the other party with respect to the management of the property of the other party, but without personal liability of the joining party thereunder.

ARTICLE VI
INCOME TAXES

During the course of their marriage, [H-Name] and [W-Name] shall file federal income tax returns and state income tax returns (if applicable) jointly, if they both agree to so file, or separately, if either party so elects. The liability for the taxes indicated by such returns shall be apportioned equitably to and shall be satisfied out of [H-Name]’s separate property, [W-Name]’s separate property, and their community property, if any, giving appropriate weight to the amount and character of income and the deductions related to each classification of property, with [H-Name] and [W-Name] hereby agreeing to use their best efforts to insure that income taxes assessed on separate property are paid from the separate property sources of each respective spouse. Only the actual tax liability shall be apportioned between the parties. Neither party shall be required to compensate the other for utilization of deductions of such other party, nor shall any right of reimbursement arise as a result of the utilization of one party's deduction to offset the other party’s income. [H-Name] and [W-Name] agree that filing joint returns and pooling their respective income and deductions shall not be a waiver of the provisions of this Agreement.

ARTICLE VII
DISTRIBUTIONS UPON TERMINATION OF MARRIAGE BY DIVORCE

In the event the parties’ marriage is dissolved by divorce or annulment by any court, wherever located, each party shall receive one-half of the parties’ jointly owned property and shall retain his or her own separate property following the dissolution. To effectuate this provision, [H-Name] and [W-Name] relinquish and disclaim any right they may have to seek a division of their property other than in accordance with this article, and agree to indemnify the other for the value of any property that may be awarded by a court in excess of the value that would result if division were in accordance with this article.

ARTICLE VIII
AMENDMENT

This Agreement may be amended, modified, or revoked only by an acknowledged written instrument signed by both parties. The parties expressly reserve the rights to amend, modify, or revoke this Agreement in form or in substance by their mutual agreement at any time during their marriage.
ARTICLE IX
GENERAL

9.1 Parties in Interest. This Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

9.2 Third Party Reliance. All third parties shall have the right to rely completely upon the execution, by either [H-Name] or [W-Name], of any conveyance, encumbrance, or other document relating to property standing in the sole name of [H-Name] or [W-Name], respectively, as though such party were the sole owner; and if any inquiry is made with respect to the necessity of a joinder of the party hereto who is not named as an owner of the property involved, the furnishing by such owner to a third party of (a) a certificate that this provision is included in this Agreement, without the necessity of furnishing a copy of this Agreement or any other part hereof or (b) a copy of this Agreement shall be controlling upon both [H-Name] and [W-Name], notwithstanding any other provision herein contained.

9.3 Mutual Assistance. [H-Name] and [W-Name] agree to take any and all steps to cooperate fully in executing, acknowledging and delivering to the other spouse or his or her personal representative any instruments necessary or expedient to implement the terms and intent of this Agreement (including, without limitation, a post wedding ratification of this Agreement under a form of ratification substantially similar, or the same, as provided under Annex A attached hereto and incorporated herein by reference). Whether the Ratification Agreement is executed or not, all the provisions of this Agreement are binding, including but not limited to the effect of causing the income and revenues from the separate property of [H-Name] to be [H-Name]’s Separate Property and the income, revenues and profits from the separate property of [W-Name] to be [W-Name]’s Separate Property.

9.4 Informed Consent. [H-Name] and [W-Name] hereby warrant and represent, each to the other, that:

A. This Agreement was entered into voluntarily with full knowledge of its scope and effect;
B. This Agreement was not unconscionable when it was executed by the parties;
C. Prior to execution of this Agreement, each party was provided fair and reasonable disclosure of the property and financial obligations of the other party (including, without limitation, the size and composition of the estate of each party); and
D. This Agreement was not procured by fraud, duress or overreaching;
E. Each party has given careful consideration and thought to the making of this Agreement;
F. Each party has read each provision of this Agreement;
G. Each party fully and completely understands each provision of this Agreement, both as to the subject matter and legal effect; and
H. Each party has obtained separate legal counsel to advise that party with respect to this Agreement, and that each party enters into this Agreement after receiving the full advice of his or her respective legal counsel, and after careful thought, consideration and understanding of this Agreement.

9.5 Recordation of Agreement. This Agreement may be recorded in the deed records of any county within or without the State of Texas in which either spouse may desire to record the same. [H-Name] and [W-Name] may edit the schedules attached hereto when submitting the Agreement for recording and may delete
therefrom all or any portion of the material set out on the schedules, including, without limitation, any and all references to the value of the property described in the schedules, so long as both spouses agree to any such editing or deleting.

9.6 **Supersedes Previous Agreements.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties relating to the subject matters contained herein.

9.7 **Acknowledged Instrument.** All references in this Agreement to an "acknowledged instrument" mean an instrument signed by the designated party and acknowledged in the presence of a notary public in the manner specified for transfers of real property by the law of the jurisdiction where the acknowledgment is taken or is to have effect.

9.8 **Use of Words.** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the context requires.

9.9 **Titles, Headings, and Captions.** All titles, headings, and captions used in this Agreement are for administrative convenience only. Any conflict between the headings and text shall be resolved in favor of the text.

9.10 **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws applicable thereto, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such illegal, invalid, or unenforceable provision, there shall be substituted automatically as a part of this Agreement a provision as similar in terms, intent, and effect as may be possible and legal, valid, and enforceable.

9.11 **Governing Law.** This Agreement is to be interpreted under the laws of the State of Texas.

Signed at ______________, Texas, in multiple copies, each of which shall be deemed to be an original, on the dates set forth under the respective acknowledgments below, to be effective, however, only upon the solemnization of the marriage vows of [H-Name] and [W-Name] and the completion of all legal formalities required for the finalization of their marriage (the "Effective Date").

______________________________   ______________________________
[NAME OF HUSBAND]               [NAME OF WIFE]
The undersigned attorneys acknowledge that they have served as legal counsel for their respective clients in connection with this Agreement.

[H-ATTORNEY-LAW FIRM NAME] [W-ATTORNEY-LAW FIRM NAME]
By: ____________________________ By: ____________________________
[H-Attorney-Name] [W-Attorney-Name]
Attorneys for
[NAME OF HUSBAND] Attorneys for
[NAME OF WIFE]
[Address] [Address]

STATE OF TEXAS §
§
COUNTY OF _____________ §

BEFORE ME, the undersigned authority, on this day personally appeared [NAME OF HUSBAND], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this _____ day of __________, 20___.

______________________________
Notary Public in Texas
My Commission Expires: __________________________

STATE OF TEXAS §
§
COUNTY OF _____________ §

BEFORE ME, the undersigned authority, on this day personally appeared [NAME OF WIFE], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this _____ day of __________, 20___.

______________________________
Notary Public in Texas
My Commission Expires: __________________________
## SCHEDULE A

**SEPARATE PROPERTY OF [NAME OF HUSBAND]**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF ASSET</th>
<th>APPROXIMATE VALUE</th>
</tr>
</thead>
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<td>(1)</td>
<td>Stocks and Bonds:</td>
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<td>(2)</td>
<td>Cash and Notes:</td>
<td></td>
</tr>
<tr>
<td>(3)</td>
<td>Corporate Employee Benefit Plans:</td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td>Real Estate:</td>
<td></td>
</tr>
<tr>
<td>(5)</td>
<td>Mineral Interests:</td>
<td></td>
</tr>
<tr>
<td>(6)</td>
<td>Life Insurance Policies:</td>
<td></td>
</tr>
<tr>
<td>(7)</td>
<td>Automobiles:</td>
<td></td>
</tr>
</tbody>
</table>
All household goods, jewelry, clothing, furniture, fixtures, objects of art, equipment, and all other tangible personal property of a nature and use similar to the foregoing, in and about [H-Residence-Address] as of the date of execution of this Agreement.

SIGNED FOR IDENTIFICATION:

______________________________
[NAME OF HUSBAND]

______________________________
[NAME OF WIFE]
SCHEDULE B

LIABILITIES OF [NAME OF HUSBAND]

<table>
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<th>ITEM NO.</th>
<th>DESCRIPTION OF LIABILITY</th>
<th>APPROXIMATE AMOUNT</th>
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</thead>
<tbody>
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<td>$__________</td>
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<tr>
<td>(2)</td>
<td></td>
<td>_________</td>
</tr>
</tbody>
</table>

SIGNED FOR IDENTIFICATION:

_________________________________________________
[NAME OF HUSBAND]

_________________________________________________
[NAME OF WIFE]
# SCHEDULE C

**SEPARATE PROPERTY OF [NAME OF WIFE]**

<table>
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<th>ITEM NO.</th>
<th>DESCRIPTION OF ASSET</th>
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<td>(3)</td>
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<td>(6)</td>
<td>Life Insurance Policies:</td>
<td></td>
</tr>
<tr>
<td>(7)</td>
<td>Automobiles:</td>
<td></td>
</tr>
</tbody>
</table>
(8) All household goods, jewelry, clothing, furniture, fixtures, objects of art, equipment, and all other tangible personal property of a nature and use similar to the foregoing, in and about [W-Residence-Address] as of the date of execution of this Agreement.

SIGNED FOR IDENTIFICATION:

_________________________________________________
[NAME OF HUSBAND]

_________________________________________________
[NAME OF WIFE]
## SCHEDULE D

**LIABILITIES OF [NAME OF WIFE]**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF LIABILITY</th>
<th>APPROXIMATE AMOUNT</th>
</tr>
</thead>
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<td>$__________</td>
</tr>
<tr>
<td>(2)</td>
<td></td>
<td>__________</td>
</tr>
</tbody>
</table>

**SIGNED FOR IDENTIFICATION:**

__________________________  
[NAME OF HUSBAND]

__________________________  
[NAME OF WIFE]
ANNEX A
TO PREMARITAL PROPERTY AGREEMENT
BETWEEN [NAME OF HUSBAND] AND [NAME OF WIFE]
DATED ______________, 20___

RATIFICATION OF [H-LAST-NAME]-[W-LAST-NAME]
PREMARITAL PROPERTY AGREEMENT

WHEREAS, on ______________, 20___, we, [NAME OF HUSBAND] and [NAME OF WIFE],
signed that certain Premarital Property Agreement (the "Agreement") effective on the completion of all legal
formalities required for the finalization of our marriage; and

WHEREAS, we were subsequently married to each other on ______________, 20__; and

WHEREAS, we intend by this instrument to ratify, confirm, and republish the Agreement in all
respects.

NOW THEREFORE, we, [NAME OF HUSBAND] and [NAME OF WIFE], do hereby ratify,
confirm and republish the Agreement in all respects and incorporate the Agreement by reference into this
document as though fully set forth herein.

__________________  ______________________________________
(date)            [NAME OF HUSBAND]

__________________  ______________________________________
(date)            [NAME OF WIFE]

STATE OF TEXAS  §

COUNTY OF ____________ §

BEFORE ME, the undersigned authority, on this day personally appeared [NAME OF HUSBAND],
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he
executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of ________________, 20__.

________________________________________
Notary Public in Texas
My Commission Expires: ___________________
STATE OF TEXAS §

COUNTY OF ____________ §

BEFORE ME, the undersigned authority, on this day personally appeared [NAME OF WIFE], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of ________________, 20___.

________________________________________
Notary Public in Texas
My Commission Expires: ___________________
APPENDIX C
Specimen Form
Opt-Out Premarital Agreement

PREMARITAL PROPERTY AGREEMENT

between

[NAME OF HUSBAND]

and

[NAME OF WIFE]

DATE: ____________
This is a Premarital Property Agreement (the “Agreement”) made by and between [NAME OF HUSBAND] ("[H-Name]“) and [NAME OF WIFE] ("[W-Name]“). [H-Name] and [W-Name] are sometimes referred to in this Agreement collectively as the “parties” or “spouses” and individually as a "party" or "spouse."

RECITALS

A. [H-Name] and [W-Name] are planning to be married to each other on [Marriage-Date].

B. Each of [H-Name] and [W-Name] owns certain separate properties and each of [H-Name] and [W-Name] believes it will be in his or her best interest to prevent any confusion over the characterization of his or her respective separate properties upon the termination of their marital relationship. Accordingly, each of [H-Name] and [W-Name] will herein identify his or her respective separate properties and will also agree that the income, increases in value, or other property arising from such separate properties will be and forever remain a part of such separate properties.

C. Each of [H-Name] and [W-Name] has decided to completely withdraw from the Texas community property system. Accordingly, each party will agree that [H-Name]’s Earnings (as hereinafter defined) shall be and remain [H-Name]’s separate property, [W-Name]’s Earnings (as hereinafter defined) shall be and remain [W-Name]’s separate property, and that no community property will arise during their marriage to each other.

D. Each of [H-Name] and [W-Name] has also decided that the respective separate properties of each of them shall not be liable for or become obligated for the payment of the indebtedness of the other except to the extent that a spouse specifically grants his or her authorization therefor.

E. Each of [H-Name] and [W-Name] has been advised and each understands that by entering into this Agreement each party to this Agreement may permanently surrender claims he or she would otherwise have under Texas law to income or property derived from separate property of his or her spouse or from the earnings of his or her spouse.

NOW, THEREFORE, for and in consideration of the premises and the mutual benefits to accrue to [H-Name] and [W-Name], and for other good and valuable consideration, the receipt and sufficiency of which are hereby confirmed and acknowledged by both parties, [H-Name] and [W-Name] hereby enter into the following agreements in accordance with Section 15, Article XVI of the Texas Constitution, as amended, and Sections 4.001 through 4.010 of the Texas Family Code, as amended.
AGREEMENT

ARTICLE II
INTRODUCTORY STIPULATIONS, AGREEMENTS,
AND CERTAIN DEFINITIONS

2.1 Domicile. [H-Name] stipulates that he is domiciled in the City of ________________, ________________ County, Texas. [W-Name] stipulates that she is domiciled in the City of ________________, ________________ County, Texas.

2.2 Children. [H-Name] has _____ (___) children by a previous marriage, _________________. [W-Name] has _____ (___) children by a previous marriage, _________________.

2.3 Disclosure. Each party has disclosed to the other the nature, extent, and probable value of his or her separate property. The parties agree that the nature, extent and probable values so disclosed are not a material or significant factor influencing either party to enter into this Agreement and neither the omission of any asset nor any error or mistake in the probable current value of any asset shall affect the validity of this Agreement. Each party has been provided a fair and reasonable opportunity to obtain further disclosure of the property and financial obligations of the other party. Furthermore, each party acknowledges that, prior to the execution of this Agreement, he or she has executed a Waiver of Disclosure of Financial Information whereby each party has voluntarily and expressly waived any right to disclosure of the property or financial obligations of the other party beyond the disclosure herein provided.

2.4 Valuations Omitted. To the extent that the probable values of certain assets are omitted, the parties agree that such values are not a material or significant factor influencing either party to enter into this Agreement, nor shall such omissions affect the validity of this Agreement.

2.5 Intent to Define Property Rights. The parties to this Agreement have the intent and desire to define the respective rights of each in the property of the other after their marriage. The parties intend and desire that all property owned by either of them at the time of their marriage and all separate property that may or has come to either of them during their marriage be clearly identified as their separate property, and that such property will be preserved to each of them during their marriage for purposes of management, liability, ownership, accounting, and otherwise. It is each party's intent to retain and have sole management, control, and disposition of his or her separate property and of any revenue from his or her separate property.

2.6 Divorce or Termination of Marriage. All references in this Agreement to "divorce" shall mean and include the termination of the marital relationship by a suit for divorce or annulment or to declare a marriage void, or any other legal proceeding resulting in the dissolution of the marital relationship. All references in this Agreement to "termination of marriage" shall mean the dissolution of the marital relationship by divorce (as that term is defined above) or death.

ARTICLE III
OWNERSHIP OF PROPERTIES

3.1 Separate Property. All references to "separate property" shall include the items set forth below in this section.

A. Existing Separate Property. All properties, both real and personal, owned by a party as of the date of this Agreement shall be the separate property of that party.
B. **Separate Property Acquired by Gift, Devise, or Inheritance.** All properties which are at any time acquired by a party by gift, devise, or descent shall be and remain the separate property of that party.

C. **Purchase, Sale, or Exchange of Property.** All properties which are at any time acquired by a party by purchase with, sale of, or in exchange for that party's separate property shall be and remain the separate property of that party.

D. **Separate Property Acquired by Debt.** All properties which are at any time acquired by a party in exchange for obligations binding only on that party's separate property shall be and remain that party's separate property.

E. **Increases in Value.** All increases in value in a party's separate property, including, without limitation, all increases in value attributable to the time, toil, skill, efforts, and work of either party (or the agent of either party) shall be and remain the separate property of the spouse owning such separate property.

F. **Personal Injury Recoveries.** All recoveries that a party receives for personal injuries sustained by that party shall be and remain that party's separate property, including, without limitation, that portion of the recoveries attributable to lost earnings capacity for personal injuries sustained by that party.

G. **Revenues from Separate Property.** All revenues from the separate property of a party shall be and remain the separate property of that party and shall be subject to the sole management, control, and disposition of that party. Without limitation by enumeration, the word "revenue" or "revenues" as used herein includes increase of livestock, growing crops, proceeds from the sale of oil, gas, and other minerals in and under or attributable to the property of a party (whether the property is fee title, royalty, overriding royalty, or working interest), rentals, delay rentals, dividends, and other distributions (whether in cash or in stock or other security or property) with respect to stock and partnership interests, distributions from trusts, interest earned on obligations, bank accounts, securities, certificates of deposit, and other sums owed or to be owing to the party. For the purpose of segregating the properties of the parties, it is agreed that the parties will establish and maintain accounting procedures, records, and bank accounts for the purpose of maintaining the separate character of their separate funds. However, failure to maintain accounting procedures, records and bank accounts shall not constitute, in whole or in part, a waiver by either party of any right, interest or claim of any nature whatsoever to which such party would otherwise be entitled under the provisions of this Agreement.

H. **Earnings.** [H-Name]'s Earnings (as hereinafter defined) shall be and remain [H-Name]'s separate property. [W-Name]'s Earnings (as hereinafter defined) shall be and remain [W-Name]'s separate property.

3.2 **[H-Name]'s Separate Property.** [H-Name] and [W-Name] hereby convey, partition, exchange, and set aside unto [H-Name], as his separate property, the following described properties (collectively, "[H-Name]'s Separate Property"):  

A. **Existing Property.** All property listed on Schedule A attached to this Agreement and incorporated herein by reference ("Schedule A");

B. **After-Acquired Property.** All separate property acquired by [H-Name] after the date of this Agreement;
C. Increases in Value of Separate Property. All increases in value of separate property owned by or acquired by [H-Name], including, without limitation, accumulations or increases in value thereon resulting from the time, toil, skill, efforts, and work of either party (or the agent of either party);

D. [H-Name]'s Earnings. All compensation, whether present or deferred, and including, without limitation, remuneration, director's or other like fees, carried interests, net profit interests, commissions, salaries, wages, bonuses, royalty payments, contributions to and benefits under qualified and nonqualified employee benefit plans and stock option plans, warrants, and any other earnings or compensation for personal services earned by or paid or payable to [H-Name] during [H-Name]'s and [W-Name]'s marriage to each other (collectively, "[H-Name]'s Earnings"); and

E. Income and Mutations. All income on, increases in value of, and revenue or property from all or part of the property described in Subsections 2.2 A through D above, including, but not limited to, all income or revenue of whatever type earned thereon, all reinvestments and successive mutations of whatever nature thereof, all increases in value, and all income or revenue on such reinvestments, mutations, and increases in value.

[W-Name] understands that except for this Agreement, income on or revenue from [H-Name]'s Separate Property, increases in value of [H-Name]'s Separate Property attributable to either party's skill, efforts, and work during the marriage, and [H-Name]'s Earnings may be community property or give rise to a claim of (i) reimbursement from or economic contribution to the separate estate of [H-Name] or (ii) enhancement of the value of the community property estate, and that by this Agreement such income, revenue, increases in value and earnings are made and shall remain the separate property of [H-Name], without any claims for reimbursement, economic contribution, or enhancement, which claims are hereby waived. Except as otherwise provided in this Agreement, [W-Name] shall never have, acquire, or claim any right or interest in any of [H-Name]'s Separate Property, whether during the marriage, during any period of separation, or at any time after the termination of the marital relationship unless [H-Name] specifically provides for [W-Name] to benefit from such property. If [W-Name] should acquire a community property interest in any of [H-Name]'s Separate Property by operation of law, [W-Name] hereby agrees to give that community property interest to [H-Name] as necessary to effectuate the intent of this Agreement.

Notwithstanding the foregoing, should [H-Name], subsequent to the execution of this Agreement, discover that [H-Name] omitted from Schedule A any property owned by [H-Name] on the date of this Agreement and prior to the date of [H-Name]'s and [W-Name]'s marriage, [H-Name] may, at [H-Name]'s option, notify [W-Name] and the parties shall undertake to execute, in accordance with Section 2.5 of this Agreement, an amendment to Schedule A describing the omitted properties and such Schedule A shall have like effect as though the omitted property had been set out on such Schedule A at the time of the execution of this Agreement. However, failure to amend Schedule A shall not constitute, in whole or in part, a waiver by [H-Name] of any right, interest or claim of any nature whatsoever to which [H-Name] would otherwise be entitled under the provisions of this Agreement.

3.3 [W-Name]'s Separate Property. [H-Name] and [W-Name] hereby convey, partition, exchange, and set aside unto [W-Name], as her sole and separate property, the following described properties (collectively, ", [W-Name]'s Separate Property"): 

A. Existing Property. All property listed on Schedule C attached to this Agreement and incorporated herein by reference ("Schedule C");

B. After-Acquired Property. All separate property acquired by [W-Name] after the date of this Agreement;
C. Increases in Value of Separate Property. All increases in value of separate property owned by or acquired by [W-Name], including, without limitation, accumulations or increases in value thereon resulting from the time, toil, skill, efforts, and work of either party (or the agent of either party);

D. [W-Name]'s Earnings. All compensation, whether present or deferred, and including, without limitation, remuneration, director's or other like fees, carried interests, net profit interests, commissions, salaries, wages, bonuses, royalty payments, contributions to and benefits under qualified and nonqualified employee benefit plans and stock option plans, warrants, and any other earnings or compensation for personal services earned by or paid or payable to [W-Name] during [W-Name]'s and [H-Name]'s marriage to each other (collectively, "[W-Name]'s Earnings"); and

E. Income and Mutations. All income on, increases in value of, and revenue or property from all or part of the property described in Subsections 2.3 A through D above, including, but not limited to, all income or revenue of whatever type earned thereon, all reinvestments and successive mutations of whatever nature thereof, all increases in value, and all income or revenue on such reinvestments, mutations, and increases in value.

[H-Name] understands that except for this Agreement, income or revenue on [W-Name]'s Separate Property, increases in value of [W-Name]'s Separate Property attributable to either party's skill, efforts, and work during the marriage, and [W-Name]'s Earnings may be community property or give rise to a claim of (i) reimbursement from or economic contribution to the separate property estate of [W-Name] or (ii) enhancement of the value of the community property estate, and that by this Agreement such income, revenue, increases in value and earnings are made and shall remain the separate property of [W-Name], without any such rights or claims for reimbursement, economic contribution, or enhancement, which claims are hereby waived. Except as otherwise provided in this Agreement, [H-Name] shall never have, acquire, or claim any right or interest in any of [W-Name]'s Separate Property, whether during the marriage, during any period of separation, or at any time after the termination of the marital relationship unless [W-Name] specifically provides for [H-Name] to benefit from such property. If [H-Name] should acquire a community property interest in any of [W-Name]'s Separate Property by operation of law, [H-Name] hereby agrees to give that community property interest to [W-Name] as necessary to effectuate the intent of this Agreement.

Notwithstanding the foregoing, should [W-Name], subsequent to the execution of this Agreement, discover that [W-Name] omitted from Schedule C any property owned by [W-Name] on the date of this Agreement and prior to the date of [H-Name]'s and [W-Name]'s marriage, [W-Name] may, at [W-Name]'s option, notify [H-Name] and the parties shall undertake to execute, in accordance with Section 2.5 of this Agreement, an amendment to Schedule C describing the omitted properties and such Schedule C shall have like effect as though the omitted property had been set out on such Schedule C at the time of the execution of this Agreement. However, failure to amend Schedule C shall not constitute, in whole or in part, a waiver by [W-Name] of any right, interest or claim of any nature whatsoever to which [W-Name] would otherwise be entitled under the provisions of this Agreement.

3.4 Intention to Avoid Accumulations of Community Property. [H-Name] and [W-Name] intend and hereby agree that no community property estate will arise or exist as a result of their marriage to each other. Accordingly, to further this objective, and to reinforce the intentions, objectives and agreements of the parties as heretofore provided, [H-Name] hereby gives, grants, partitions and conveys unto [W-Name], as [W-Name]'s Separate Property, all of [W-Name]'s Earnings, all income or revenue earned from [W-Name]'s Separate Property, and all increases in value of [W-Name]'s Separate Property. Similarly, [W-Name] hereby gives, grants, partitions and conveys unto [H-Name], as [H-Name]'s Separate Property, all of [H-Name]'s Earnings, all income or revenue earned from [H-Name]'s Separate Property, and all increases in value of [H-Name]'s Separate Property.
3.5 **Schedules.** The parties agree to cooperate fully and to maintain records and accounts that will distinguish the separate property estate of each. In this regard, it is contemplated (although it is not required) that [H-Name] and [W-Name] will periodically agree to and attach schedules to this Agreement that list separate property hereafter acquired by both parties, by gift, purchase, devise, or inheritance, regardless of the source and the manner of acquisition, and any mutations, income, and other properties acquired as a result of sale, reinvestment, or other disposition of the separate properties, or income derived from the separate properties, and any such properties listed on these schedules shall become a part of and be subject to the terms of this Agreement. Such schedules will be conclusive as to the character of the property listed thereon, and the parties agree never to take a contrary position. Notwithstanding the foregoing, the validity of this Agreement will not be affected by the failure of [H-Name] and [W-Name] to attach supplemental schedules to this Agreement, and the failure to list any additional separate property as part of this Agreement shall never be construed to mean that any additional separate property hereafter acquired by a party is other than the separate property of that party. [H-Name] and [W-Name] (or their respective heirs, descendants, successors, or personal representatives) shall use their best efforts to trace all separate properties arising from income or mutation or other reinvestment of the properties listed on Schedule A and Schedule C.

3.6 **Partition and Exchange.** As provided by Article XVI, Section 15, of the Texas Constitution and relevant sections of the Texas Family Code, [H-Name] and [W-Name] hereby partition between themselves their respective interests in what would (in absence of this Agreement) otherwise be community property acquired during their marriage, such that all of the property described in Section 2.2 of this Agreement shall automatically become [H-Name]'s Separate Property, as provided therein, and that all of the property described in Section 2.3 of this Agreement shall automatically become [W-Name]'s Separate Property, as provided therein, without the necessity of any further written instruments between the parties. [H-Name] and [W-Name] exchange between themselves all of the community interest of [H-Name] in [W-Name]'s Separate Property for all of the community interest of [W-Name] in [H-Name]'s Separate Property, whereupon the portion or interest described in Section 2.2 as [H-Name]'s Separate Property shall be and constitute the separate property and estate of [H-Name] and the portion or interest described in Section 2.3 as [W-Name]'s Separate Property shall be and constitute the separate property and estate of [W-Name].

3.7 **Waiver of Certain Rights and Benefits.**

A. **Marital Rights (Including Homestead).** Each party hereby waives and releases any and all claims that a party may have against the other party (or against the other party's estate) that would otherwise arise as a result of the exempt property and family allowance laws of the State of Texas or any other applicable jurisdiction, and the rights of election against the party's last will and testament, including, without limitation, any claims of dower and curtesy (inchoate or otherwise), any rights to quasi community property under any law, now or hereafter in force, of the State of Texas or any other applicable jurisdiction, and the right to inherit as an heir-at-law under the intestacy statutes of the State of Texas or any other jurisdiction; provided, however, this provision shall not prevent a party from voluntarily making provisions for the other party, during lifetime or at death, but neither party is relying on the other party having made any of such provisions. In addition, each of [H-Name] and [W-Name] hereby expressly, knowingly and permanently waives any homestead rights that would be available to him or her as a surviving spouse under Texas law or the law of any other jurisdiction.

B. **Alimony and Support.** If either party files a petition for divorce, each party agrees that neither party shall seek, obtain, or accept permanent or temporary alimony, or temporary or other support (except child support, if applicable), against the other party and each party agrees that the consideration provided to each party under this Agreement shall be in lieu of any rights to alimony or temporary or permanent support, which each such party hereby waives.
C. **Retirement Benefits.** Unless named by a written instrument as a beneficiary by the party who is the participant, each party who is the nonparticipant spouse waives all right, title, and interest, if any, that he or she may acquire by virtue of marriage to the participant spouse in all of the participant spouse’s retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of the participant spouse’s past, present, or future employment. The nonparticipant spouse acknowledges that this waiver includes all rights that he or 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 the participant spouse has or may have in the future. The nonparticipant spouse further waives all rights he or 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 the participant spouse under the terms of his or her current or future employee benefit plan or plans. The nonparticipant spouse further agrees to consent in writing to, and accept, the participant spouse’s designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be requested or required by the participant spouse 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 the participant spouse’s death. In addition, each party agrees to such consents, consistent with the requirements of the Retirement Equity Act of 1984, as amended from time to time (“REA”), as may be required to waive in writing all statutory rights, if any, which he or she may now have or may hereafter acquire by virtue of being a participant’s spouse or former spouse in any qualified plans that are governed by REA in which the other party is a participant. Such rights include, without limitation, rights to pre-retirement survivor annuities and joint and survivor annuities.

D. **Reimbursement.** Except to the extent necessary to comply with Article VI hereof, each spouse waives the right to assert any claim for reimbursement that he or she might have in the future against the separate property estate of the other spouse.

E. **Economic Contribution.** Each spouse waives the right to assert any claim for economic contribution, as defined by the Texas Family Code, that he or she might have in the future against the separate property estate of the other spouse.

**ARTICLE IV**

**LIABILITIES**

4.1 **Preexisting Liabilities.** The liabilities listed on Schedule B attached to this Agreement and incorporated herein by reference (“Schedule B”) are [H-Name]’s separate liabilities and the liabilities listed on Schedule D attached to this Agreement and incorporated herein by reference (“Schedule D”) are [W-Name]’s separate liabilities. All of the separate liabilities and obligations of the parties which exist at the date of this Agreement (contingent and absolute, including any taxes, interest or penalties that a party may owe to the federal government for years or taxable periods before the marriage of the parties) shall be enforceable against and discharged from the separate property of the party who incurred the liability and shall not be enforceable against or dischargeable from the property of the other party.

4.2 **Liabilities During the Marriage.** Unless otherwise specifically agreed to in writing, and except for support and maintenance obligations as provided in Article IV hereof, all debts and liabilities of a party which are incurred or arise subsequent to the date of this Agreement in connection with the operation or management of that party’s separate property shall be that party’s separate property debts and liabilities, and shall be enforceable against and discharged solely from the separate property of the party incurring same and shall not be enforceable against or dischargeable from the separate property of the other party. Each spouse agrees to use his or her best efforts to see that any such debts are incurred on the basis that the creditor dealing
with the spouse incurring such debts will agree in writing to look only to the separate property of such spouse for recovery of such debt.

4.3 Reciprocal Indemnity. For the purpose of effectuating the provisions of Sections 3.1 and 3.2 above, each of the parties hereto, respectively, hereby agrees to save and hold the other party harmless from and to indemnify, out of the separate revenues and property of the indemnifying party, the other party against all liabilities and obligations heretofore or hereafter incurred by the indemnifying party.

4.4 Future Credit Transactions. Recognizing the complexity of modern business credit transactions and each party desiring to allow the other to enter into such transactions without the other party's express approval or joinder, the parties make the following agreement respecting such future credit transactions: When either party enters into a transaction wherein credit is extended to that party or that party becomes liable or obligated for the repayment, contingent or otherwise, of credit extended by any third party, then such obligation or obligations shall be satisfied wholly from his or her separate property, and the party incurring such obligations shall hold such other party harmless from such obligation and indemnify him or her in the event he or she is ever required to satisfy same. In consideration of such agreement, each party agrees that the assets, if any, acquired through such credit transaction or transactions shall be and remain the separate property of the party obligating his or her separate property for the credit extended in acquiring same or resulting in the acquisition of same.

ARTICLE V
SUPPORT

5.1 Contribution of Separate Property for Mutual Support. The parties agree that either or both [H-Name] and [W-Name] may, from time to time, contribute amounts of their respective separate property or income therefrom to an account (the “Household Account”) for the payment of ordinary and necessary items or expenses incurred in the mutual support of the parties. The separate funds so advanced may be deposited to the Household Account or to any joint bank accounts or expended directly for such purposes. The parties further agree that any such payment for their mutual support will not create a debt owing to or enhancement of the paying party's separate estate or a corresponding right of reimbursement from the Household Account or the parties' jointly held property, unless the parties expressly agree, in writing, to the contrary with respect to a particular payment or expense.

5.2 Support of Children of This Marriage. By entering into this Agreement, neither party is relieved of any obligation that party may have as a result of children born to or adopted of their marriage.

5.3 No Duty to Support Spouse's Child. [H-Name] and [W-Name] agree that during their marriage and upon the termination of their marriage for any cause, [W-Name] is under no duty or obligation to provide a home or support for the care and maintenance of the minor or incapacitated children of [H-Name] by a prior marriage, and [H-Name] is under no duty or obligation to provide a home or support for the care and maintenance of the minor or incapacitated children of [W-Name] by a prior marriage, regardless of the ages of the children either at the time of the parties' marriage or at the time of the termination of their marriage.

ARTICLE VI
MANAGEMENT

Each party hereto shall have the full, free, and unrestricted right to manage the separate property of that party, including, without limitation, the right to convey or encumber the same, to dispose of same by sale, gift, or otherwise, and to deal with such property without taking into consideration any rights or interests of the other party hereto without joinder of the other party. If joinder of [H-Name] or [W-Name] ("joining party") should be required by law in connection with any document desired to be executed by the other party hereto
with respect to the management of the separate property of such other party upon request and from time to time, the joining party will execute any such instrument necessary to effectuate the desires of the other party with respect to the management of the separate property of the other party, but without personal liability of the joining party thereunder.

ARTICLE VII
INCOME TAXES

During the course of their marriage, [H-Name] and [W-Name] shall file federal income tax returns and state income tax returns (if applicable) jointly, if they both agree to so file, or separately, if either party so elects. The liability for the taxes indicated by such returns shall be apportioned equitably to and shall be satisfied out of [H-Name]'s separate property and/or [W-Name]'s separate property, giving appropriate weight to the amount and character of income and the deductions related to each classification of property, with [H-Name] and [W-Name] hereby agreeing to use their best efforts to insure that income taxes assessed on separate property are paid from the separate property sources of each respective spouse. Only the actual tax liability shall be apportioned between the parties. Neither party shall be required to compensate the other for utilization of deductions of such other party, nor shall any right of reimbursement arise as a result of the utilization of one party’s deduction to offset the other party’s income. [H-Name] and [W-Name] agree that filing joint returns and pooling their respective income and deductions shall not be a waiver of the provisions of this Agreement.

ARTICLE VIII
DISTRIBUTIONS UPON TERMINATION OF MARRIAGE BY DIVORCE

In the event the parties’ marriage is dissolved by divorce or annulment by any court, wherever located, each party shall receive one-half of the parties’ jointly owned property and shall retain his or her own separate property following the dissolution. To effectuate this provision, [H-Name] and [W-Name] relinquish and disclaim any right they may have to seek a division of their property other than in accordance with this article, and agree to indemnify the other for the value of any property that may be awarded by a court in excess of the value that would result if division were in accordance with this article.

ARTICLE IX
AMENDMENT

This Agreement may be amended, modified, or revoked only by an acknowledged written instrument signed by both parties. The parties expressly reserve the rights to amend, modify, or revoke this Agreement in form or in substance by their mutual agreement at any time during their marriage.

ARTICLE X
GENERAL

10.1 Parties in Interest. This Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

10.2 Third Party Reliance. All third parties shall have the right to rely completely upon the execution, by either [H-Name] or [W-Name], of any conveyance, encumbrance, or other document relating to property standing in the sole name of [H-Name] or [W-Name], respectively, as though such party were the sole owner; and if any inquiry is made with respect to the necessity of a joinder of the party hereto who is not named as an owner of the property involved, the furnishing by such owner to a third party of a certificate that this provision is included in this Agreement, without the necessity of furnishing a copy of this Agreement or any other part hereof or a copy of this Agreement, shall be controlling upon both [H-Name] and [W-Name], notwithstanding any other provision herein contained.
10.3 Mutual Assistance. [H-Name] and [W-Name] agree to take any and all steps to cooperate fully in executing, acknowledging and delivering to the other party or his or her personal representative any instruments necessary or expedient to implement the terms and intent of this Agreement, including, without limitation, the signing of a post wedding ratification of this Agreement within sixty (60) days after the Effective Date (hereinafter defined) under a form of ratification substantially similar to, or the same as, the form provided under Annex A attached hereto and incorporated herein by reference (the “Ratification Agreement”). Whether the Ratification Agreement is executed or not, all the provisions of this Agreement are binding, including but not limited to the effect of causing the income and revenues from the separate property of [H-Name] and [H-Name]’s Earnings to be [H-Name]’s Separate Property and the income, revenues and profits from the separate property of [W-Name] and [W-Name]’s Earnings to be [W-Name]’s Separate Property.

10.4 Informed Consent. [H-Name] and [W-Name] hereby warrant and represent, each to the other, that:

A. This Agreement was entered into voluntarily with full knowledge of its scope and effect;

B. This Agreement was not unconscionable when it was executed by the parties;

C. Prior to execution of this Agreement, each party was provided fair and reasonable disclosure of the property and financial obligations of the other party (including, without limitation, the size and composition of the estate of each party);

D. This Agreement was not procured by fraud, duress or overreaching;

E. Each party has given careful consideration and thought to the making of this Agreement;

F. Each party has read each provision of this Agreement;

G. Each party fully and completely understands each provision of this Agreement, both as to the subject matter and legal effect; and

H. Each party has obtained separate legal counsel to advise that party with respect to this Agreement, and that each party enters into this Agreement after receiving the full advice of his or her respective legal counsel, and after careful thought, consideration and understanding of this Agreement.

10.5 Recordation of Agreement. This Agreement may be recorded in the deed records of any county within or without the State of Texas in which either spouse may desire to record the same. [H-Name] and [W-Name] may edit or omit the schedules attached hereto when submitting the Agreement for recording and may delete therefrom all or any portion of the material set out on the schedules, including, without limitation, any and all references to the value of the property described in the schedules, so long as both spouses agree to any such editing or deleting.

10.6 Supersedes Previous Agreements. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties relating to the subject matters contained herein.

10.7 Acknowledged Instrument. All references in this Agreement to an "acknowledged instrument" mean an instrument signed by the designated party and acknowledged in the presence of a notary public in the manner specified for transfers of real property by the law of the jurisdiction where the acknowledgment is taken or is to have effect.
10.8 **Use of Words.** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the context requires.

10.9 **Titles, Headings, and Captions.** All titles, headings, and captions used in this Agreement are for administrative convenience only. Any conflict between the headings and text shall be resolved in favor of the text.

10.10 **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws applicable thereto, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such illegal, invalid, or unenforceable provision, there shall be substituted automatically as a part of this Agreement a provision as similar in terms, intent, and effect as may be possible and legal, valid, and enforceable.

10.11 **Governing Law.** This Agreement is to be interpreted under the laws of the State of Texas.

Signed at ______________, Texas, in multiple copies, each of which shall be deemed to be an original, on the dates set forth under the respective acknowledgments below, to be effective, however, only upon the solemnization of the marriage vows of [H-Name] and [W-Name] and the completion of all legal formalities required for the finalization of their marriage (the “Effective Date”).

____________________________________________________________________
[NAME OF HUSBAND]                                           [NAME OF WIFE]

The undersigned attorneys acknowledge that they have served as legal counsel for their respective clients in connection with this Agreement.

____________________________________________________________________
[H-ATTORNEY-LAW FIRM NAME]                                           [W-ATTORNEY-LAW FIRM NAME]

By: ______________________________  By: ______________________________
[H-Attorney-Name]                                           [W-Attorney-Name]

Attorneys for
[NAME OF HUSBAND]                                           Attorneys for
[Address]                                           [NAME OF WIFE]
[Address]
Before me, the undersigned authority, on this day personally appeared [Name of Husband], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ___ day of ____________, 20__.

__________________________
Notary Public in Texas
My Commission Expires:_____________________

State of Texas §
§
County of _________ §

Before me, the undersigned authority, on this day personally appeared [Name of Wife], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ___ day of ____________, 20__.

__________________________
Notary Public in Texas
My Commission Expires:_____________________

State of Texas §
§
County of _________ §
### SCHEDULE A

**SEPARATE PROPERTY OF [NAME OF HUSBAND]**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF ASSET</th>
<th>APPROXIMATE VALUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Stocks and Bonds:</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Cash and Notes:</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Corporate Employee Benefit Plans:</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Real Estate:</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Mineral Interests:</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Life Insurance Policies:</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Automobiles:</td>
<td></td>
</tr>
</tbody>
</table>
8. All household goods, jewelry, clothing, furniture, fixtures, objects of art, equipment, and all other tangible personal property of a nature and use similar to the foregoing, in and about [H-Residence-Address] as of the date of execution of this Agreement.

SIGNED FOR IDENTIFICATION:

__________________________
[NAME OF HUSBAND]

__________________________
[NAME OF WIFE]
### SCHEDULE B

**LIABILITIES OF [NAME OF HUSBAND]**

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<th>ITEM NO.</th>
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<td>$_________</td>
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<tr>
<td>2.</td>
<td></td>
<td>__________</td>
</tr>
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**SIGNED FOR IDENTIFICATION:**

_________________________________________
[NAME OF HUSBAND]

_________________________________________
[NAME OF WIFE]
## SCHEDULE C

### SEPARATE PROPERTY OF [NAME OF WIFE]

<table>
<thead>
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<th>ITEM NO.</th>
<th>DESCRIPTION OF ASSET</th>
<th>APPROXIMATE VALUE</th>
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<td>1.</td>
<td>Stocks and Bonds:</td>
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<td>3.</td>
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<td>4.</td>
<td>Real Estate:</td>
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<tr>
<td>5.</td>
<td>Mineral Interests:</td>
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</tr>
<tr>
<td>7.</td>
<td>Automobiles:</td>
<td></td>
</tr>
</tbody>
</table>
8. All household goods, jewelry, clothing, furniture, fixtures, objects of art, equipment, and all other tangible personal property of a nature and use similar to the foregoing, in and about [W-Residence-Address] as of the date of execution of this Agreement.

SIGNED FOR IDENTIFICATION:

_________________________________________________
[NAME OF HUSBAND]

_________________________________________________
[NAME OF WIFE]
### SCHEDULE D

**LIABILITIES OF [NAME OF WIFE]**

<table>
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<th>ITEM NO.</th>
<th>DESCRIPTION OF LIABILITY</th>
<th>APPROXIMATE AMOUNT</th>
</tr>
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<tbody>
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<td>$_________</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>__________</td>
</tr>
</tbody>
</table>

**SIGNED FOR IDENTIFICATION:**

______________________________
[NAME OF HUSBAND]

______________________________
[NAME OF WIFE]
ANNEX A

TO PREMARITAL PROPERTY AGREEMENT

BETWEEN [NAME OF HUSBAND] AND [NAME OF WIFE]

DATED ______________, 20___

RATIFICATION OF [H-LAST-NAME]-[W-LAST-NAME]

PREMARITAL PROPERTY AGREEMENT

WHEREAS, on ______________, 20___, we, [NAME OF HUSBAND] and [NAME OF WIFE], signed that certain Premarital Property Agreement (the "Agreement") effective on the completion of all legal formalities required for the finalization of our marriage; and

WHEREAS, we were subsequently married to each other on ______________, 20___; and

WHEREAS, we intend by this instrument to ratify, confirm, and republish the Agreement in all respects.

NOW THEREFORE, we, [NAME OF HUSBAND] and [NAME OF WIFE], do hereby ratify, confirm and republish the Agreement in all respects and incorporate the Agreement by reference into this document as though fully set forth herein.

__________________ ______________________________________________
(date) [NAME OF HUSBAND]

__________________ ______________________________________________
(date) [NAME OF WIFE]

STATE OF TEXAS §

COUNTY OF _________ §

BEFORE ME, the undersigned authority, on this day personally appeared [NAME OF HUSBAND], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of ______________, 20__.

_______________________________________
Notary Public in Texas
My Commission Expires: _________________
STATE OF TEXAS §

COUNTY OF _________ §

BEFORE ME, the undersigned authority, on this day personally appeared [NAME OF WIFE], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of ________________, 20___.

_______________________________________
Notary Public in Texas
My Commission Expires: _______________
APPENDIX D
Specimen Form
Standard Agreement to Convert Separate Property to Community Property

AGREEMENT TO CONVERT SEPARATE PROPERTY TO COMMUNITY PROPERTY

This Agreement (the "Agreement") is made and entered into this ____ day of __________, 20___, by and between [WIFE-MARRIED-NAME] (also known as "[WIFE]"), and hereinafter referred to as "Wife") and [HUSBAND] (hereinafter referred to as "Husband"), Wife and Husband, both of ______________, __________ County, Texas.

RECITALS

[WIFE-MARRIED-NAME]/[HUSBAND] now owns the property described on Schedule 1, attached hereto and made a part of this Agreement (hereinafter referred to as the "Property").

The Property constitutes the separate property of [Wife]/[Husband].

[Wife]/[Husband] desires to convert the Property from [Wife]’s/[Husband]’s separate property to Wife’s and Husband's community property.

AGREEMENT

NOW, THEREFORE, pursuant to Subchapter C, Chapter 4 of the Texas Family Code, Wife and Husband agree as follows.

1. [Wife]/[Husband] hereby converts the Property from [Wife]’s/[Husband]’s separate property to Wife’s and Husband’s community property.

2. Wife and Husband acknowledge that this Agreement is enforceable without consideration.

3. Each party to this Agreement acknowledges that he or she received fair and reasonable disclosure of the legal effect of converting the Property to community property, including the following:

   THIS INSTRUMENT CHANGES SEPARATE PROPERTY TO COMMUNITY PROPERTY.
   THIS MAY HAVE ADVERSE CONSEQUENCES DURING MARRIAGE AND ON TERMINATION OF
   THE MARRIAGE BY DEATH OR DIVORCE. FOR EXAMPLE:

   EXPOSURE TO CREDITORS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE
   SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME
   SUBJECT TO THE LIABILITIES OF YOUR SPOUSE. IF YOU DO NOT SIGN THIS AGREEMENT,
   YOUR SEPARATE PROPERTY IS GENERALLY NOT SUBJECT TO THE LIABILITIES OF YOUR
   SPOUSE UNLESS YOU ARE PERSONALLY LIABLE UNDER ANOTHER RULE OF LAW.

   LOSS OF MANAGEMENT RIGHTS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF
   THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME
   SUBJECT TO EITHER THE JOINT MANAGEMENT, CONTROL, AND DISPOSITION OF YOU AND
   YOUR SPOUSE OR THE SOLE MANAGEMENT, CONTROL, AND DISPOSITION OF YOUR SPOUSE
   ALONE. IN THAT EVENT, YOU WILL LOSE YOUR MANAGEMENT RIGHTS OVER THE
PROPERTY. IF YOU DO NOT SIGN THIS AGREEMENT, YOU WILL GENERALLY RETAIN THOSE RIGHTS.

LOSS OF PROPERTY OWNERSHIP. IF YOU SIGN THIS AGREEMENT AND YOUR MARRIAGE IS SUBSEQUENTLY TERMINATED BY THE DEATH OF EITHER SPOUSE OR BY DIVORCE, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME THE SOLE PROPERTY OF YOUR SPOUSE OR YOUR SPOUSE’S HEIRS. IF YOU DO NOT SIGN THIS AGREEMENT, YOU GENERALLY CANNOT BE DEPRIVED OF OWNERSHIP OF YOUR SEPARATE PROPERTY ON TERMINATION OF YOUR MARRIAGE, WHETHER BY DEATH OR DIVORCE.

4. Each party to this Agreement warrants to the other that he or she enters into this Agreement voluntarily.

5. This Agreement is performable and enforceable in ____________ County, Texas. This Agreement shall be controlled, construed and given effect by and under the laws of the State of Texas. It is intended that this Agreement shall continue to be valid and effective without respect to where the parties are domiciled at any time in the future.

6. The parties hereto agree to execute such documents as may hereafter be necessary or required to effectuate the terms of this Agreement.

SIGNED this ____ day of _______________, 20___.

__________________ ________________________________________
(date) [WIFE-MARRIED-NAME]
(Formerly known as [WIFE])

___________________ ________________________________________
(date) [HUSBAND]

STATE OF TEXAS §

COUNTY OF ____________ §

BEFORE ME, the undersigned authority, on this day personally appeared [WIFE-MARRIED-NAME], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of ________________, 20___.

_______________________________________
Notary Public in Texas
My Commission Expires: ___________________
STATE OF TEXAS §

COUNTY OF ____________ §

BEFORE ME, the undersigned authority, on this day personally appeared [HUSBAND], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of _____________, 20___.

Notary Public in Texas
My Commission Expires: ________________
SCHEDULE 1

Property Description
APPENDIX E
Sample Provisions for Separate to Community Property Conversion (with Assumption of Mortgage Indebtedness)
in a Standard Premarital Agreement

ARTICLE I
INTRODUCTORY STIPULATIONS, AGREEMENTS, AND CERTAIN DEFINITIONS

1.7 Residence. All references in this Agreement to the "Residence" mean the real property and all improvements thereon located at ______________________, __________, Texas 7_____, being more particularly described as Lot __, Block __ of the ____________ Addition to the City of ___________, in __________ County, Texas.

ARTICLE II
OWNERSHIP OF PROPERTIES

2.4 Community Property. This Agreement is not intended to change or alter the character of income or other mutations from community property or property purchased with community funds during the marriage of [H-Name] and [W-Name] or community property items such as salaries or other compensation for services. Except as otherwise provided herein or as otherwise provided under applicable state or federal law, the parties agree that earnings, whether present or deferred, and including benefits under employee benefit plans, remuneration, salaries, wages, or compensation from personal services accruing during the marriage and expressly identifiable as such (sometimes referred to herein as "Earnings"), together with all property acquired or income derived therefrom, shall be community property. Further, except as otherwise provided under applicable state or federal law, all employer or employee contributions made during this marriage to any retirement annuity contract, individual retirement account, profit sharing or pension plan or any other retirement savings arrangement held in the name of or on behalf of either [H-Name] or [W-Name], together with all future increment in value attributable to such contributions, whether by investment yield or capital appreciation, shall be community property. In addition, any separate property which a party has knowingly invested in community property shall be deemed to have become community property and all claims of the separate estate of the contributing party for reimbursement, economic contribution, or enhancement are hereby waived unless [H-Name] and [W-Name] otherwise agree in writing. Except as otherwise provided under this Agreement, each party agrees that he or she will only be entitled to, and will not assert any claims on community property in excess of, his or her one-half share of the community property acquired during the marriage. Notwithstanding the foregoing provisions of this section or any other provisions of this instrument to the contrary, [H-Name] and [W-Name] desire that the Residence become community property upon their marriage (subject to the assumption of the mortgage indebtedness secured by the Residence). Accordingly, [H-Name] and [W-Name] make the following special agreements concerning the Residence.

A. Residence Becomes Community Property. Effective immediately following the marriage of [H-Name] and [W-Name], the Residence will pass from [W-Name]'s separate property estate to [H-Name]'s and [W-Name]'s community estate based on the value listed on Schedule __ and will become the community property of [H-Name] and [W-Name].

B. Mortgage Indebtedness as Joint and Several Liability. Effective immediately following the marriage of [H-Name] and [W-Name], the indebtedness secured by the Residence listed as item __ of Schedule __ (the "Mortgage Indebtedness") will become the joint and several liability of [H-Name] and [W-Name] and to the extent necessary, each of [H-Name] and [W-Name] agree to assume the Mortgage Indebtedness as the joint and several liability of both spouses on the conversion of the Residence to community property. Further, [H-Name] and [W-Name] agree that, in the event
of any refinancing of the Mortgage Indebtedness (the “Refinanced Mortgage Indebtedness”), [H-Name] and [W-Name] will execute such documents as necessary to cause the Refinanced Mortgage Indebtedness to be an obligation of the community property estate of [H-Name] and [W-Name].

C. Conversion Agreement. To the extent necessary to carry out the agreements set forth above concerning the Residence and the Mortgage Indebtedness, within thirty (30) days following the marriage of [H-Name] and [W-Name], [H-Name] and [W-Name] agree to execute an Agreement to Convert Separate Property to Community Property in the form attached hereto as Exhibit __ and incorporated herein by reference (the “Conversion Agreement”) that provides for the following:

1. The Residence will be converted from [W-Name]’s separate property to [H-Name]’s and [W-Name]’s community property and [H-Name] and [W-Name] will assume the Mortgage Indebtedness as the joint and several liability of both spouses.

2. [W-Name] acknowledges that, in making this agreement to convert the Residence to community property, [W-Name] understands that the Conversion Agreement changes separate property to community property. Further, [W-Name] understands that under the Conversion Agreement the Residence will be converted from [W-Name]’s separate property to community property of [H-Name] and [W-Name] may have adverse consequences during marriage and on termination of the marriage by death or divorce, for example:

   (a) Exposure to Creditors. If [W-Name] signs the Conversion Agreement, all or part of the separate property being converted to community property may become subject to the liabilities of [H-Name]. If [W-Name] does not sign the Conversion Agreement, [W-Name]’s separate property is generally not subject to the liabilities of [H-Name] unless she is personally liable under another rule of law.

   (b) Loss of Management Rights. If [W-Name] signs the Conversion Agreement, all or part of the separate property being converted to community property may become subject to either the joint management, control, and disposition of [W-Name] and [H-Name] or the sole management, control, and disposition of [H-Name] alone. In that event, [W-Name] will lose [W-Name]’s management rights over the property. If [W-Name] does not sign the Conversion Agreement, [W-Name] will generally retain those rights.

   (c) Loss of Property Ownership. If [W-Name] signs the Conversion Agreement and her marriage is subsequently terminated by the death of either spouse or by divorce, all or part of the separate property being converted to community property may become the sole property of [H-Name] or [H-Name]’s heirs. If [W-Name] does not sign the Conversion Agreement, [W-Name] generally cannot be deprived of ownership of [W-Name]’s separate property on termination of [W-Name]’s marriage to [H-Name], whether by death or divorce.

D. Community Estate and Obligations. Immediately following their marriage and the execution of the Conversion Agreement, [H-Name] and [W-Name] will own on the Effective Date, at a minimum, as community property, the Residence and will assume the Mortgage Indebtedness as the joint and several liability of [H-Name] and [W-Name].
APPENDIX F
Specimen Form
Agreement to Convert Separate Property to Community Property
(with Assumption of Mortgage Indebtedness)

AGREEMENT TO CONVERT SEPARATE PROPERTY TO COMMUNITY PROPERTY
(WITH ASSUMPTION OF MORTGAGE INDEBTEDNESS)

This Agreement (the "Agreement") is made and entered into this ___ day of ___________, 20___,
by and between [WIFE-MARRIED-NAME] (also known as "[WIFE]") and hereinafter referred to as "Wife")
and [HUSBAND] (hereinafter referred to as "Husband"), Wife and Husband, both of _______________,
_________ County, Texas.

RECITALS

Wife now owns the property described on Schedule 1, attached hereto and made a part of this
Agreement (hereinafter referred to as the "Property").

The Property constitutes the separate property of Wife.

Wife is indebted to __________ in the approximate amount of ________________________ Dollars
($_________), which indebtedness is secured by a lien and deed of trust on the Property described on Schedule
1 attached hereto and made a part of this Agreement (the “Mortgage Indebtedness”).

The Mortgage Indebtedness constitutes the separate indebtedness of Wife.

Wife desires to convert the Property from Wife’s separate property to Wife’s and Husband's
community property and the conversion of the Property to community property is subject to the assumption
of the Mortgage Indebtedness as the joint and several liability of both parties, including the following:

AGREEMENT

NOW, THEREFORE, pursuant to Subchapter C, Chapter 4 of the Texas Family Code, Wife and
Husband agree as follows.

1. Wife hereby converts the Property from Wife’s separate property to Wife’s and Husband’s
community property subject to the agreement of the Wife and Husband to assume the Mortgage Indebtedness
as the joint and several liability of Wife and Husband.

2. Wife and Husband acknowledge that this Agreement is enforceable without consideration.

3. Each party to this Agreement acknowledges that he or she received fair and reasonable
disclosure of the legal effect of converting the Property to community property subject to the assumption of
the Mortgage Indebtedness as a joint and several liability of both parties, including the following:

THIS INSTRUMENT CHANGES SEPARATE PROPERTY TO COMMUNITY PROPERTY.
THIS MAY HAVE ADVERSE CONSEQUENCES DURING MARRIAGE AND ON TERMINATION
OF THE MARRIAGE BY DEATH OR DIVORCE. FOR EXAMPLE:
EXPOSURE TO CREDITORS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO THE LIABILITIES OF YOUR SPOUSE. IF YOU DO NOT SIGN THIS AGREEMENT, YOUR SEPARATE PROPERTY IS GENERALLY NOT SUBJECT TO THE LIABILITIES OF YOUR SPOUSE UNLESS YOU ARE PERSONALLY LIABLE UNDER ANOTHER RULE OF LAW.

LOSS OF MANAGEMENT RIGHTS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO EITHER THE JOINT MANAGEMENT, CONTROL, AND DISPOSITION OF YOU AND YOUR SPOUSE OR THE SOLE MANAGEMENT, CONTROL, AND DISPOSITION OF YOUR SPOUSE ALONE. IN THAT EVENT, YOU WILL LOSE YOUR MANAGEMENT RIGHTS OVER THE PROPERTY. IF YOU DO NOT SIGN THIS AGREEMENT, YOU WILL GENERALLY RETAIN THOSE RIGHTS.

LOSS OF PROPERTY OWNERSHIP. IF YOU SIGN THIS AGREEMENT AND YOUR MARRIAGE IS SUBSEQUENTLY TERMINATED BY THE DEATH OF EITHER SPOUSE OR BY DIVORCE, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME THE SOLE PROPERTY OF YOUR SPOUSE OR YOUR SPOUSE’S HEIRS. IF YOU DO NOT SIGN THIS AGREEMENT, YOU GENERALLY CANNOT BE DEPRIVED OF OWNERSHIP OF YOUR SEPARATE PROPERTY ON TERMINATION OF YOUR MARRIAGE, WHETHER BY DEATH OR DIVORCE.

4. Each party to this Agreement warrants to the other that he or she enters into this Agreement voluntarily.

5. This Agreement is performable and enforceable in ____________ County, Texas. This Agreement shall be controlled, construed and given effect by and under the laws of the State of Texas. It is intended that this Agreement shall continue to be valid and effective without respect to where the parties are domiciled at any time in the future.

6. The parties hereto agree to execute such documents as may hereafter be necessary or required to effectuate the terms of this Agreement.

SIGNED this ____ day of _______________, 20__.

__________________ ________________________________________  
(date) [WIFE-MARRIED-NAME]  
(Formerly known as [WIFE])

___________________ ________________________________________
(date) [HUSBAND]
BEFORE ME, the undersigned authority, on this day personally appeared [W-MARRIED-NAME], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of ________________, 20__.

_______________________________________
Notary Public in Texas
My Commission Expires: ________________

STATE OF TEXAS §
$ §
COUNTY OF _________ §

BEFORE ME, the undersigned authority, on this day personally appeared [HUSBAND], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of ________________, 20__.

_______________________________________
Notary Public in Texas
My Commission Expires: ________________
SCHEDULE 1

Real Property and all improvements located at __________________________, _____________, Texas 7_____, being more particularly described as Lot __, Block __ of the ______________ Addition to the City of _____________, in __________ County, Texas.
SCHEDULE 2

Promissory Note in the original principal sum of ____________________________ Dollars ($__________), dated ________________, 20__, from ______________________________ to ____________________________, secured by Deed of Trust from ______________________________ to ____________________________, Trustee, dated ________________, 20__ and recorded at Volume ______, Page _____ of the __________ Records of ______________ County, Texas.
APPENDIX G
Sample Provisions for Cash Payments on Divorce or Death,
Contractual Will Requirements, Declaratory Judgment, and Confidentiality
in Opt-Out Premarital Agreement

ARTICLE VII
DISTRIBUTIONS UPON TERMINATION OF MARRIAGE BY DIVORCE OR DEATH

7.1 Termination of the Marriage by Divorce – Petition Initially Filed by [W-Name] or [W-Name]’s
Agent, Guardian, Conservator, or Other Legal Representative. If the Marriage is terminated by divorce (or
[H-Name]’s death during the pendency of the divorce) and if the petition for divorce (or like pleading) was
initially filed by [W-Name] or in [W-Name]’s behalf by any agent (other than [H-Name]), attorney-in-fact
(other than [H-Name]), guardian (other than [H-Name]), conservator (other than [H-Name]), or other legal
representative (other than [H-Name]), then [W-Name] shall receive from [H-Name] (or from [H-Name]’s estate
if [H-Name] is deceased) the following amounts:

A. Married Three (3) Years or Less. If at the time the petition for divorce is initially
filed, [H-Name] and [W-Name] have been married to each other for not more than three (3) years, then
upon the earlier of (1) the date the judge signs the final decree of divorce or (2) the date of [H-Name]’s
death if [H-Name] dies during the pendency of the divorce, [W-Name] shall be entitled to receive from
[H-Name] (or from [H-Name]’s estate if [H-Name] is deceased), a lump sum cash payment of [Dollar
Amount ($___________)]. The above-described lump sum cash payment shall be paid to [W-Name]
within sixty (60) days after the earlier of (1) and (2) above.

B. Married More than Three (3) Years but Not More Than Five (5) Years. If at the time
the petition for divorce is initially filed, [H-Name] and [W-Name] have been married to each other for
more than three (3) years but not more than five (5) years, then upon the earlier of (1) the date the judge
signs the final decree of divorce or (2) the date of [H-Name]’s death if [H-Name] dies during the
pendency of the divorce, [W-Name] shall be entitled to receive from [H-Name] (or from [H-Name]’s estate if [H-Name] is deceased), a lump sum cash payment of [Dollar Amount + ($___________)]. The above-described lump sum cash payment shall be paid to [W-Name] within sixty (60) days after the earlier of (1) and (2) above.

C. Married More than Five (5) Years but Not More Than Ten (10) Years. If at the time
the petition for divorce is initially filed, [H-Name] and [W-Name] have been married to each other for
more than five (5) years but not more than ten (10) years, then upon the earlier of (1) the date the judge
signs the final decree of divorce or (2) the date of [H-Name]’s death if [H-Name] dies during the
pendency of the divorce, [W-Name] shall be entitled to receive from [H-Name] (or from [H-Name]’s estate if [H-Name] is deceased), a lump sum cash payment of [Dollar Amount + + ($___________)]. The above-described lump sum cash payment shall be paid to [W-Name] within sixty (60) days after the earlier of (1) and (2) above.

D. Married More Than Ten (10) Years. If at the time the petition for divorce is initially
filed, [H-Name] and [W-Name] have been married to each other for more than ten (10) years, then
upon the earlier of (1) the date the judge signs the final decree of divorce or (2) the date of [H-Name]’s
death if [H-Name] dies during the pendency of the divorce, [W-Name] shall be entitled to receive from
[H-Name] (or from [H-Name]’s estate if [H-Name] is deceased), a lump sum cash payment of [Dollar
Amount + + + ($___________)]. The above-described lump sum cash payment shall be paid to [W-
Name] within sixty (60) days after the earlier of (1) and (2) above.

7.2 Termination of the Marriage by Divorce – Petition Filed by [H-Name] But Not by [H-Name]’s
Attorney-in-Fact, Guardian, or Conservator. If the Marriage is terminated by divorce (or [H-Name]’s death
during the pendency of the divorce) and if the petition for divorce (or like pleading) was initially filed by [H-Name] but not by [H-Name]’s guardian, conservator, or attorney-in-fact under a written power of attorney, then [W-Name] shall receive from [H-Name] (or from [H-Name]’s estate if [H-Name] is deceased) the following amounts:

A. **Married Five (5) Years or Less.** If at the time the petition for divorce is initially filed, [H-Name] and [W-Name] have been married to each other for not more than five (5) years, then upon the earlier of (1) the date the judge signs the final decree of divorce or (2) the date of [H-Name]’s death if [H-Name] dies during the pendency of the divorce, [W-Name] shall be entitled to receive from [H-Name] (or from [H-Name]’s estate if [H-Name] is deceased), a lump sum cash payment of [2nd Dollar Amount ($___________)]. The above-described lump sum cash payment shall be paid to [W-Name] within sixty (60) days after the earlier of (1) and (2) above.

B. **Married More than Five (5) Years but Not More Than Ten (10) Years.** If at the time the petition for divorce is initially filed, [H-Name] and [W-Name] have been married to each other for more than five (5) years but not more than ten (10) years, then upon the earlier of (1) the date the judge signs the final decree of divorce or (2) the date of [H-Name]’s death if [H-Name] dies during the pendency of the divorce, [W-Name] shall be entitled to receive from [H-Name] (or from [H-Name]’s estate if [H-Name] is deceased), a lump sum cash payment of [2nd Dollar Amount + ($___________)]. The above-described lump sum cash payment shall be paid to [W-Name] within sixty (60) days after the earlier of (1) and (2) above.

C. **Married More Than Ten (10) Years.** If at the time the petition for divorce is initially filed, [H-Name] and [W-Name] have been married to each other for more than ten (10) years, then upon the earlier of (1) the date the judge signs the final decree of divorce or (2) the date of [H-Name]’s death if [H-Name] dies during the pendency of the divorce, [W-Name] shall be entitled to receive from [H-Name] (or from [H-Name]’s estate if [H-Name] is deceased), a lump sum cash payment of [2nd Dollar Amount + + ($___________)]. The above-described lump sum cash payment shall be paid to [W-Name] within sixty (60) days after the earlier of (1) and (2) above.

D. **Petition Must Be Filed By [H-Name] Personally.** The provisions of this section shall only apply if [H-Name] personally (or through his lawyer) files the petition for divorce (or like pleading). It shall not apply if the petition for divorce (or like pleading) is filed by [H-Name]’s attorney-in-fact under a valid written power of attorney (other than [W-Name]) or by [H-Name]’s guardian (other than [W-Name]), conservator (other than [W-Name]), or similar fiduciary (other than [W-Name]).

7.3 **Termination of the Marriage by Divorce – Petition Filed by [H-Name]’s Attorney-in-Fact, Guardian, or Conservator.** If the Marriage is terminated by divorce (or [H-Name]’s death during the pendency of the divorce), and the petition for divorce (or like pleading) was initially filed by [H-Name]’s guardian (other than [W-Name]), conservator (other than [W-Name]), attorney-in-fact under a valid written power of attorney (other than [W-Name]) or similar fiduciary (other than [W-Name]), then sixty (60) days after the judge signs the final decree of divorce or sixty (60) days after [H-Name]’s date of death if [H-Name] dies during the pendency of the divorce, whichever first occurs, [W-Name] shall receive the following from [H-Name] (or from [H-Name]’s estate if he is then deceased):

A. **[W-Name] Homestead Free of Debt.** [H-Name]’s interest in the Texas residence [H-Name] and [W-Name] were occupying as their homestead immediately prior to the filing of the petition for divorce, if any, free and clear of all indebtedness thereon;
B. Car [W-Name] is Driving at the Time of [H-Name]’s Death. [H-Name]’s interest in the automobile [W-Name] is driving immediately before the filing of the petition for divorce, if any, free and clear of all indebtedness thereon; and

C. Monthly Cash Payment. A monthly cash payment of [Monthly Dollar Amount ($___________)] commencing on the first day of the month which begins immediately after the lapse of thirty (30) days after the filing of the petition for divorce, and which payments shall continue on the first day of each month thereafter until all of the benefits described at Subsections A, B, and D of this section have been satisfied, at which time such monthly payments shall cease (provided, however, that the monthly payments under this subsection shall be in partial satisfaction of and not in addition to the payment under Subsection D of this Section); and

D. Lump Sum Cash Payment. A lump sum cash payment equal to [3rd Dollar Amount ($___________)], reduced by the fair market value of the property received under Subsections A, B, and C of this section on the date of receipt.

7.4 Termination of the Marriage by [H-Name]’s Death. If the Marriage is terminated because of [H-Name]’s death, if no petition for divorce filed by or on behalf of [W-Name] is pending immediately before [H-Name]’s death, and if [W-Name] survives [H-Name] by more than thirty (30) days, then [W-Name] shall receive the following as a result of [H-Name]’s death:

A. [W-Name] Homestead Free of Debt. [H-Name] interest in the Texas residence [H-Name] and [W-Name] were occupying as their homestead at the time of [H-Name]’s death, if any, free and clear of all indebtedness thereon;

B. Car [W-Name] is Driving at the Time of [H-Name]’s Death. [H-Name]’s interest in the automobile [W-Name] is driving immediately before [H-Name]’s death, if any, free and clear of all indebtedness thereon;

C. Monthly Cash Payment. A monthly cash payment of [Monthly Dollar Amount ($___________)] commencing on the first day of the month which begins immediately after the lapse of thirty (30) days after [H-Name]’s will is admitted to probate but under no circumstances commencing later than sixty (60) days after [H-Name]’s death, and which payments shall continue on the first day of each month thereafter until all of the benefits described at Subsections A, B, and D of this section have been satisfied, at which time such monthly payments shall cease (provided, however, that the monthly payments under this subsection shall be in partial satisfaction of and not in addition to the payment under Subsection D of this Section); and

D. Lump Sum Cash Payment. A lump sum cash payment equal to [3rd Dollar Amount ($___________)], reduced by the fair market value of the property received under Subsections A, B, and C of this section (with the noncash items to be valued by the Independent Fiduciary (hereinafter defined) on the date of [H-Name]’s death).

7.5 Independent Personal Representative and Trustee. [H-Name] agrees that at his death, he will appoint an Independent Fiduciary (hereinafter defined) to be solely responsible for the administration of [H-Name]’s estate or any trust created by [H-Name] for his own benefit (e.g., a revocable living trust). This Independent Fiduciary shall serve in such capacity until [W-Name] receives the benefits [W-Name] is entitled to receive under this Agreement. For purposes of this Agreement, the term “Independent Fiduciary” shall mean, without limitation, the executor or other personal representative of [H-Name]’s estate and/or the trustee of any trust created by [H-Name] during his lifetime or at his death. Further, the following individuals are absolutely excluded from the definition of Independent Fiduciary and are prohibited from serving in such capacity: Any of [H-Name]’s children, any other descendant of [H-Name], and any individual or entity that
would have been considered related or subordinate to [H-Name] during [H-Name]’s lifetime within the meaning of Section 672(c) of the Code (as hereinafter defined).

7.6 Source of Payments. Notwithstanding any other provision of this Agreement to the contrary, all amounts due [W-Name] from [H-Name] or [H-Name]’s estate under this Agreement may be paid and shall be deemed to be satisfied to the extent paid (1) by the personal representative of [H-Name]’s estate from the assets of [H-Name]’s estate, (2) from the trustee of any living trust established by [H-Name] during his lifetime, (3) by the trustee of any trust created by [H-Name] at [H-Name]’s death, (4) as a result of [H-Name] having named [W-Name] as beneficiary on any of [H-Name]’s Separate Property, including but not limited to any life insurance policy insuring [H-Name]’s life or any qualified or non-qualified employee benefit plan or individual retirement account, and/or (5) as a result of property having passed to [W-Name] on account of [H-Name]’s death by right of survivorship (but only to the extent that the property passing to [W-Name] by right of survivorship is attributable to consideration furnished by [H-Name]).

7.7 [H-Name]’s Conforming Testamentary Provisions. No later than six (6) months following the date of their marriage, [H-Name] agrees to make a valid last will and testament or codicil thereto or an inter vivos trust which references this Agreement and satisfies [H-Name]’s gifting requirements under this Agreement. [H-Name] agrees to comply with Section 59A of the Texas Probate Code and to include in his will, codicil, or trust an acknowledgment of the existence of this Agreement and a summary of its material provisions as they concern the particular devise or bequest made in the will, codicil or trust. [H-Name] agrees to provide [W-Name] with photocopies of the relevant pages of his executed will, codicil, or trust which complies with this section. Notwithstanding the foregoing, if for any reason [H-Name] fails to comply with the provisions of this section, the Agreement shall remain in full force and effect and [W-Name]’s only remedy shall be a claim against [H-Name]’s estate in an amount equal to the value, on the date of [H-Name]’s death, of the benefits that are agreed to be provided under this Agreement by [H-Name] to [W-Name] but are not received by [W-Name] (the “Claim Amount”), in which event [W-Name] shall be entitled to recover the Claim Amount, reasonable attorneys fees and interest on the Claim Amount from the date of [H-Name]’s death until date of payment of the Claim Amount, with such interest equal to the then short-term applicable federal rate prescribed by the Secretary of the U.S. Treasury Department in accordance with Section 1274(d) of the Code (hereinafter defined) corresponding with the date of [H-Name]’s death, compounded annually.

7.8 Code. All references in this Agreement to the “Code” shall mean the Internal Revenue Code of 1986, as amended.

ARTICLE IX
GENERAL

9.3 Mutual Assistance and Declaratory Judgment.

A. Mutual Assistance. [H-Name] and [W-Name] shall take any and all steps to cooperate fully in executing, acknowledging and delivering to the other party or his or her personal representative any instruments necessary or expedient to implement the terms and intent of this Agreement, including, without limitation, a post wedding ratification of this Agreement under a form of ratification substantially similar to, or the same as, the form provided under Annex A attached hereto (the “Ratification Agreement”). Whether the Ratification Agreement is executed or not, all the provisions of this Agreement are binding, including but not limited to the effect of causing the income, revenues and profits from the separate property of [H-Name] and [H-Name]’s Earnings to be [H-Name]’s separate property and the income, revenues and profits from the separate property of [W-Name] and [W-Name]’s Earnings to be [W-Name] separate property.

B. Declaratory Judgment. [H-Name] and [W-Name] hereby agree to participate as co-petitioners (or in a like capacity) in a post-signing declaratory judgment action with the mutual
objective of obtaining a judicial finding that this Agreement was entered into voluntarily with full knowledge of its scope and effect; that this Agreement was not unconscionable when it was executed by the parties; that prior to the execution of this Agreement, each party was provided fair and reasonable disclosure of the property and financial obligations of the other party (including, without limitation, the size and composition of the estate of each party); and that this Agreement was not procured by fraud, duress, or overreaching. Notwithstanding the foregoing, the validity of this Agreement will not be affected if for any reason the parties are unable to obtain such a declaratory judgment.

9.5 **Confidentiality.** [H-Name] and [W-Name] acknowledge the sensitive nature of this Agreement and the disclosures herein provided. They also acknowledge the importance to each other that this Agreement and the disclosures herein provided be kept private and strictly confidential. Accordingly, [H-Name] and [W-Name] hereby agree that, unless required by law or their mutual agreement, neither [H-Name] or [W-Name] will disclose the financial information provided herein to any individual who has not been directly involved in the preparation of this Agreement and its disclosures except (a) as necessary in the preparation (and audit) of such party’s tax returns, (b) as required to enforce this Agreement (including but not limited to the provisions of Section 9.3), or (c) to such party’s attorney. Notwithstanding the foregoing provisions of this section, nothing herein shall prevent [H-Name] or [W-Name], or their heirs, descendants, legal representatives, successors, and assigns from disclosing this Agreement to prove its validity and effect or to prove the separate property character of a party’s property. Furthermore, knowledge of this Agreement by members and employees of the law firms of [H-ATTORNEY-LAW FIRM NAME] and [W-ATTORNEY-LAW FIRM NAME] shall not be a breach of this provision. Either party’s failure to enforce the provisions of this Section shall not constitute, in whole or in part, a waiver by either party of any right, interest or claim of any nature whatsoever to which such party would otherwise be entitled under the provisions of this Agreement.
APPENDIX H  
Specimen Forms  
Petition for Declaratory Judgment  
and Declaratory Judgment  

NO. _____

IN THE MATTER OF THE § IN THE DISTRICT COURT

CONTEMPLATED MARRIAGE OF § ___ JUDICIAL DISTRICT

[NAME OF HUSBAND] § _____ COUNTY, TEXAS
AND §

[NAME OF WIFE] §

PETITION FOR DECLARATORY JUDGMENT

[NAME OF HUSBAND] files this Petition for Declaratory Judgment under the Uniform Declaratory Judgment Act (Chapter 37, Texas civil Practice and Remedies Code) to determine the validity and enforceability of a premarital agreement.

Petitioner, [NAME OF HUSBAND], a resident of __________ County, Texas, is a contracting party to the described premarital agreement.

1. Respondent, [NAME OF WIFE], a resident of __________ County, Texas, is also a contracting party to that agreement. Petitioner expects that Respondent will voluntarily appear in this cause by and through independent counsel of record and, accordingly, that no service of process will be required.

2. On __________, 20___, Petitioner and Respondent plan to execute a premarital agreement. The document in question is not attached to this petition but will be provided to the court at the appropriate time.

3. The premarital agreement was negotiated and prepared in Texas. The parties have agreed that Texas law will apply to the interpretation and enforcement of the premarital agreement. The premarital agreement was duly executed in Texas. The parties will be married in __________, and Texas will be their marital domicile, as well as their individual domiciles. The court has jurisdiction over the parties and this subject matter.

4. Petitioner wishes to remove, through this judicial proceeding, any uncertainty about the validity and enforceability of the premarital agreement. Petitioner alleges, and requests a judicial declaration, that no fiduciary or confidential relationship existed between Petitioner and Respondent at the time the premarital agreement was negotiated and that no fiduciary or confidential relationship existed between Petitioner and Respondent at the time the premarital agreement was executed.

Petition for Declaratory Judgment
5. Petitioner alleges, and also requests a judicial declaration, binding upon the parties, that the premarital agreement contains all the requisite terms and formalities to ensure enforceability, that Petitioner and Respondent negotiated the premarital agreement voluntarily and voluntarily arrived at mutually satisfactory terms and provisions in the premarital agreement, and that neither party is relying or acting on any representation, warranty, promise, or expectancy not expressly contained in the written premarital agreement.

6. Petitioner alleges, and also requests a judicial declaration, binding upon the parties, that the premarital agreement is not unfair or unconscionable and that it was not unfair or unconscionable when executed.

7. Petitioner alleges, and also requests a judicial declaration, binding upon the parties, that Petitioner and Respondent were each provided a fair and reasonable disclosure of the property, including its value, and financial obligations of the other party, that in any event such disclosure was waived voluntarily by each party to the full extent provided in the waiver of disclosure of financial information, and further that Petitioner and Respondent each have adequate personal knowledge of the property and financial obligations of the other party.

8. Petitioner alleges, and also requests a judicial declaration, binding upon the parties, that the premarital agreement is fair in every respect between the parties and as to each party individually for all purposes and that the premarital agreement is unambiguous and expresses fully and completely the intent and agreement of both parties, all of which is to be acknowledged in open court before judgment.

9. Petitioner alleges, and also requests a judicial declaration, binding upon the parties, that both parties acted willingly and freely in making the premarital agreement and that neither [NAME OF HUSBAND] nor [NAME OF WIFE] made the premarital agreement under duress, constraint, or compulsion of any kind whatsoever.

10. Petitioner alleges, and also requests a judicial declaration, that the premarital agreement was entered into voluntarily with full knowledge of its scope and effect; that the premarital agreement was not unconscionable when it was executed by the parties; that prior to the execution of the premarital agreement, each party was provided fair and reasonable disclosure of the property and financial obligations of the other party (including, without limitation, the size and composition of the estate of each party); and that the premarital agreement was not procured by fraud, duress, or overreaching.

Petitioner prays the Court declare the premarital agreement valid, unambiguous, and enforceable in all respects and binding upon [NAME OF HUSBAND] and [NAME OF WIFE].
Petitioner prays for general relief.

Respectfully submitted,

[H-ATTORNEY-LAW FIRM NAME]

By:   

[Signature]

[H-Attorney-Name]
Texas Bar No. _____________

Attorneys for
[NAME OF HUSBAND]
[Address]
IN THE MATTER OF THE § IN THE DISTRICT COURT

CONTEMPLATED MARRIAGE OF § __________ JUDICIAL DISTRICT

[NAME OF HUSBAND] § _______ COUNTY, TEXAS

AND §

[NAME OF WIFE] §

DEclaratory JUDGMENT

On ____________, 20__, the Petition for Declaratory Judgment filed in this case by [NAME OF HUSBAND], Petitioner, came on for trial.

Petitioner, [NAME OF HUSBAND], appeared in person and by and through counsel, [H-ATTORNEY-NAME]. Respondent, [NAME OF WIFE], also appeared in person and by and through counsel, [W-ATTORNEY-NAME], having made a general appearance and consented to this Court’s exercise of jurisdiction over him and over this cause of action. Both parties announced ready for trial.

The parties have stipulated and agreed that the material allegations of fact and law in the Petition for Declaratory Judgment are true and correct. The Court independently determined, based on the pleadings and the evidence, that the material allegations in the Petition for Declaratory Judgment are true and correct and that the relief requested in the petition should in all things be granted.

The Court makes the following determination regarding the validity and enforceability of the premarital agreement entered into between [NAME OF HUSBAND] and [NAME OF WIFE].

The Court finds that –

1. Petitioner, [NAME OF HUSBAND], a resident of __________ County, Texas, is a contracting party to the described premarital agreement.

2. Respondent, [NAME OF WIFE], a resident of __________ County, Texas, is also a contracting party to the described premarital agreement.

3. The parties are not presently married and there are no legal impediments for the proposed marriage.

4. On ______________, 20__, Petitioner and Respondent executed a premarital agreement in Texas.

5. The parties executed a waiver of disclosure of financial information before executing the premarital agreement.

6. The premarital agreement was negotiated and prepared in Texas.

7. Texas law will apply perpetually to the interpretation and enforcement of the premarital agreement.
8. The parties will be married in ______________, and Texas will be their initial marital domicile, as well as their individual domicile.

9. This Court has jurisdiction over the parties and this subject matter.

10. No fiduciary or confidential relationship existed between Petitioner and Respondent at the time the premarital agreement was negotiated, and no fiduciary or confidential relationship existed between Petitioner and Respondent at the time the premarital agreement was duly executed.

11. The premarital agreement contains all the requisite terms and formalities to ensure enforceability.

12. Petitioner and Respondent negotiated the premarital agreement voluntarily, and they voluntarily arrived at mutually satisfactory terms and provisions in the agreement.

13. Neither party is relying or acting on any representation, warranty, promise, or expectancy not expressly contained in the written premarital agreement.

14. The premarital agreement is neither unfair nor unconscionable.

15. The premarital agreement was neither unfair nor unconscionable when executed.

16. Petitioner and Respondent were each provided a fair and reasonable disclosure of property, including its value, and financial obligations of the other party.

17. 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 Waivers of Disclosure of Financial Information, copies of which are attached to this judgment as Attachments 1 and 2 and incorporated in it.

18. Petitioner and Respondent each have adequate personal knowledge of the property, including its value, and the financial obligations of the other party.

19. The premarital agreement is fair in every respect between the parties and as to each party individually for all purposes present and future.

20. The premarital agreement is unambiguous and expresses fully and completely the intent and agreement of both parties.

21. Both parties acted willingly and freely in making the premarital agreement.

22. Neither Petitioner nor Respondent negotiated or executed the premarital agreement under duress, constraint, or compulsion of any kind whatsoever.

23. The premarital agreement was entered into voluntarily with full knowledge of its scope and effect; that the premarital agreement was not unconscionable when it was executed by the parties; that prior to the execution of the premarital agreement, each party was provided fair and reasonable disclosure of the property and financial obligations of the other party (including, without limitation, the size and composition of the estate of each party); and that the premarital agreement was not procured by fraud, duress, or overreaching.
24. The premarital agreement, on marriage and reaffirmation after marriage, is fully enforceable.

It is therefore ORDERED and DECREED that the premarital agreement executed by Petitioner and Respondent (a copy of which is attached to this judgment as Attachment 3 and incorporated in it for all purposes), on marriage and reaffirmation after marriage, is enforceable under the laws of the state of Texas and is valid and binding in its entirety on Petitioner and Respondent and their heirs and assigns.

All costs of court are assessed against the party incurring them, for which let execution issue, if not timely paid.

All other requested relief not expressly granted herein is denied.

SIGNED on ________________, 20___.

JUDGE PRESIDING

APPROVED AS TO FORM:

[H-ATTORNEY-LAW FIRM NAME] [W-ATTORNEY-LAW FIRM NAME]

By: ____________________________ By: ____________________________

[H-Attorney-Name] [W-Attorney-Name]
State Bar Card No. ________ State Bar Card No. ________

Attorneys for [NAME OF HUSBAND] [NAME OF WIFE]
[Address] [Address]