



Massachusetts Marital Agreement Case Decided

by **STEPHEN F. MCDONOUGH** on **JULY 18, 2010**

Most of you have heard of a *prenuptial agreement* since they are frequently discussed in the media, especially during reports about [divorces of the rich and famous](#). Although not as well-known, postnuptial (also known as marital or post-marital) agreements also exist. A postnuptial agreement is entered into by a married couple to set forth the details of their settlement in the event of a divorce, but are drafted before the time of divorce, sometimes in an attempt to actually improve a marriage. A marital agreement is different from a separation agreement (also sometimes referred to as a divorce agreement) that is drafted for the purpose of getting a couple divorced. Thus, a post-nup or (post)marital agreement serves the same general purposes of a premarital agreement, but is signed *after* uttering “I do” instead of before. Got it?

Until last week’s decision by the [Massachusetts Supreme Judicial Court](#), the status and enforceability of such agreements in Massachusetts was murky. Now, we have a clear decision on the acceptability and standards of such agreements here in MA.

The SJC decided in the case of ***Kenneth S. Ansin vs. Cheryl A. Craven-***

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Ansin that such agreements do not violate public policy and may be enforced. The Court went on to say, similar to many other states, that before a marital agreement is sanctioned, careful scrutiny by the judge is necessary in a number of areas, including:

QUESTIONS FOR THE COURT TO CONSIDER

- Has each party had the opportunity to obtain their own legal counsel of their own choosing?
- Was fraud or coercion present in obtaining the agreement?
- Were all assets fully disclosed by both parties before the agreement was signed?
- Did each spouse knowingly and explicitly agree in writing to waive the right to have the court make an equitable division of assets and all marital rights in the event of divorce?
- Were the terms of the agreement fair and reasonable at the time the agreement was entered into and also fair and reasonable at the time of the divorce?

If you want to read more about the case, [click here](#).

This decision will be helpful to both couples and Massachusetts divorce lawyers when it comes to drafting and negotiating post-marital agreements.

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