

Can you waive spousal support in a premarital agreement?

California law isn't all that clear. In the olden days, you couldn't waive spousal support (alimony) in a premarital agreement. Then a case came along, entitled *In re Marriage of Candace Pendleton and Barry I. Fireman* (2000) 24 Cal 4th 39, that said that you could.

Because the law isn't as clear as it might be, when clients ask that spousal support be waived as part of a premarital agreement, most agreements include a paragraph like this:

"The Parties acknowledge that each has been advised and informed that under the California *Family Code* and California public policy, a pre-marital waiver or limitation of spousal support in the event of termination of the marriage may be held to be against public policy and therefore may be held invalid. The Parties have been informed of the case entitled *In re Marriage of Candace Pendleton and Barry I. Fireman*, decided by the Supreme Court of the State of California, held that spousal support waivers and limitations contained in written premarital agreements are not contrary to public policy."

Here's an excerpt from entitled *In re Marriage of Candace Pendleton and Barry I. Fireman*, the main, most recent case, that affirmed that a premarital agreement can include a spousal support (alimony) waiver:

In re Marriage of CANDACE **PENDLETON** and BARRY I. **FIREMAN**. CANDACE **PENDLETON**, Respondent, v. BARRY I. **FIREMAN**, Appellant.

No. S070018.

SUPREME COURT OF CALIFORNIA

24 Cal. 4th 39; 5 P.3d 839; 99 Cal. Rptr. 2d 278; 2000 Cal. LEXIS 6116; 2000 Cal. Daily Op. Service 6993; 2000 Daily Journal DAR 9275

August 21, 2000, Decided

SUBSEQUENT HISTORY:

Rehearing Denied November 1, 2000, Reported at: 2000 Cal. LEXIS 8581.

HISTORY: Superior Court of Los Angeles County. Super. Ct. No. SD010709. Keith M. Clemens, Commissioner.

Court of Appeal of California, Second Appellate District, Division One. No.



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B113293.

DISPOSITION: The judgment of the Court of Appeal is affirmed.

CALIFORNIA OFFICIAL REPORTS SUMMARY

In a dissolution of marriage action, the trial court ruled that the parties' premarital agreement waiving spousal support for both parties was unenforceable as against public policy, and awarded the wife substantial spousal support. (Superior Court of Los Angeles County, No. SD010709, Keith Clemens, Commissioner.) The Court of Appeal, Second Dist., Div. One, No. B113293, reversed and remanded.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that the trial court erred in ruling that the parties' waiver of spousal support was unenforceable as against public policy. The common law policy, based on assumptions that dissolution of marriage is contrary to public policy and that premarital waivers of spousal support may promote dissolution, is anachronistic. When entered into voluntarily by parties who are aware of the effect of the agreement, a premarital waiver of spousal support does not offend contemporary public policy. Such agreements are, therefore, permitted under Fam. Code, § 1612, subd. (a)(7), which authorizes the parties to contract in a premarital agreement regarding any matter, including their personal rights and obligations, that does not violate public policy or a statute imposing a criminal penalty. No public policy is violated by permitting enforcement of a waiver of spousal support executed by intelligent, well-educated persons, each of whom is self-sufficient in property and earning ability, and both of whom had the advice of counsel regarding their rights and obligations as marital partners at the time they executed the waiver. (Opinion by Baxter, J., with Werdegar, Chin, Brown, JJ., and Hastings, J., * concurring. Concurring opinion by Mosk, Acting C. J. (see p. 54). Dissenting opinion by Kennard, J. (see p. 54).)