

New York

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New York has not adopted the Uniform Premarital Agreement Act. Instead, New York has statutory law and common which governs prenuptial agreements. According to Domestic Relations Act 236 B, a prenuptial agreement must be in writing, signed by both parties, and in compliance with the procedure to execute deeds. The procedural requirements are sparse in comparison to other jurisdictions (see California Code). Similarly, the prohibitions on what may be included in a prenuptial agreement are few and far between.

New York does not have statutory law on the conflict and choice of law issues of prenuptial agreements. There is little New York common law on the conflict of law issues for prenuptial agreements, however, some general patterns have emerged. According to *Kipnis v. Kipnis*, New York has a general presumption that a duly executed prenuptial agreement is valid and enforceable. In that case, the wife argued that New York law should be applied to a prenuptial agreement that was signed in France. The court agreed and found that the prenuptial agreement was valid under New York law. It should be noted, however, that the court never addressed the glaring conflict of law issue. Instead the court automatically applied New York law. In a one hundred and eighty degree maneuver, the court in *McKoan v. McKoan* recognized and stressed the importance the conflict of law for a prenuptial agreement. The agreement had been signed in Connecticut, however the couple lived in New York. The court recognized that there was a conflict of law and undertook a “grouping of contracts” (balance test of numerous contract principles) approach to the conflict. These diverging New York State court opinions illustrate New York’s current lack of a uniform conflict of law approach to prenuptial agreements. Couple’s who think they may get divorced in New York with a prenuptial agreement should consult competent legal counsel who is aware of this ambiguity.