



## Maryland v. California PENALTY FOR ADULTERY



### **Culturally Speaking by Abbas Hadjian** *Cultural Mediator & Consultant*

#### Questions:

May spouses include a provision in a postnuptial agreement that distributes marital assets upon divorce based on adultery?

Is a lump sum provision valid and enforceable when it requires a husband to transfer to his wife \$7 million, up to the value of his 50% share of specified marital assets, if he committed adultery?

### Answers:

Unlike California, public policy in Maryland supports provisions in postnuptial agreements that distribute marital assets upon divorce when a spouse engages in adultery.

### Detail:

The Supreme Court of Maryland in *Lloyd v. Niceta*, \_\_\_ Md. \_\_\_ (August 30, 2030) held that the public policy in Maryland currently supports provisions in postnuptial agreements that distribute marital assets upon divorce when a spouse engages in adultery.

*The jurisdictions that have rejected adultery penalties or transfers of marital assets based on adultery have done so because those provisions violate no-fault divorce laws. See, e.g., Diosdado v. Diosdado, 118 Cal. Rptr. 2d 494, 496 (2002) (rejecting an adultery penalty because it contravenes California's public policy of no-fault divorce); ... Iowa, Hawai'i. Those decisions are not persuasive regarding the public policy in Maryland because this State (1) currently permits divorce based on fault, including adultery, and (2) requires courts to consider "the circumstances that contributed to the estrangement of the parties [,]" such as adultery, when issuing a monetary award following divorce. "[Maryland]... statutes establish that Maryland's public policy disfavors adultery.*

*That public policy supports spouses transferring marital assets based on adultery when it causes the dissolution of a marriage.”*

### **Culturally Speaking:**

This raises differences between California and other jurisdictions in cultural issues. For more about culture and divorce, read the Culturally Speaking Column, which appears in the ARC Archive and Daily Journal, Los Angeles and San Francisco [[https://www.dailyjournal.com/.](https://www.dailyjournal.com/)]

Contact Abbas Hadjian's Case Administrator Marjorie Luna,  
[Marjorie@arc4adr.com](mailto:Marjorie@arc4adr.com)



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Available Statewide Via Zoom  
[arc4adr.com](http://arc4adr.com) 310.284.8224