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Parties Draft Own Pre-nup, Waiver of Alimony Held Invalid

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Everyone wants to save money, and no one wants to "lawyer up" right before a wedding. It's tempting for lay people to download contracts, including pre-nuptial agreements, from the Internet, either from free services or from "do-it-yourself" websites that sell templates of legal documents. But those who are tempted to do this should read on for a cautionary tale.

Dr. Angie Larsen was a general surgeon in Nashville when she met her future husband, George Giannakoulias, whose career history was described as "sporadic." They moved in together and Dr. Larsen became pregnant. The couple moved to Florida, and then to New Mexico, for Dr. Larsen's career.

While in New Mexico, they decided to marry. They downloaded a form of a pre-nuptial contract from the Internet and executed it in that state. The agreement contained a waiver of alimony and spousal support. It also contained a "choice of law" clause, which would have allowed the parties to specify which state's law was to be applied, but the couple left that blank.

After eventually marrying in Colorado, the couple moved another few times for Dr. Larsen's career, during which she became an oncologist. They had two more children and were living in the Nashville area when Dr. Larsen sued for divorce in Williamson County, Tennessee.

The divorce case was tried over three days. Mr. Giannakoulias requested alimony, but the trial court denied the request due to the waiver of alimony in the pre-nuptial agreement.

The Court of Appeals reversed that finding. Because the choice-of-law clause had been left blank, Tennessee's choice-of-law rules would be applied, the court ruled. Tennessee uses *lex loci contractus* – "the place of making the contract" – to decide which state's substantive law to apply to a contract with no valid choice-of-law clause.

And you can guess where this is going. The prenuptial agreement was executed in New Mexico, and New Mexico has a statutory prohibition on waivers of spousal support in pre-nuptial agreements. Thus, even though the parties evidenced their intent to waive alimony claims, the waiver was held invalid under New Mexico law, and the **case was remanded** back to the trial court for consideration of the husband's alimony claim.

Dr. Larsen may have saved herself a few bucks by not having a lawyer polish up the agreement, but she exposed herself to substantial legal fees and the possibility of liability for alimony, along with the stress, hassle and uncertainty of litigation.