



all you
need is love
(and a prenup)

**BEFORE THE
WEDDING, HAVE A
FINANCIAL PLAN**

Americans are living longer and healthier lives than ever before, and as a result they're likely to marry more than once. Although marriage at any age means a union of finances, a mid- or late-life marriage often involves adult children from prior relationships, substantial assets, a house, and a 401K. These factors can make the second (or third) trip to the alter significantly more complex than the first. ▶

In general, when the marriage ends, the separate property stays with its original owner, and the marital property is divided between the spouses in the manner described in the prenup.

Introducing a new spouse into the family can complicate the transition of money from one generation to the next. Many adult children have expectations about inheriting money from their parents. These expectations frequently become intertwined with issues of familial affection, and children often perceive what their parents do with their money as a reflection of loyalty and love. Dealing with the money issues up front—ideally, before a

remarriage even takes place—with both the new spouse and the adult children can allay fears and avoid financial battles if the parent predeceases the stepparent.

CONSIDER A PRENUP

The first step is considering a prenuptial agreement. Once thought to be suitable only for the rich and famous, prenuptial agreements now are considered to be a good financial planning tool for a much wider audience, since they can be used to avoid unwanted consequences when a marriage ends, either by divorce or death. Without a prenup, the couple's assets will be divided between them according to state law. A prenup can give both the spouses and their families peace of mind, knowing that if the marriage ends, the couple's assets will be distributed according to the predetermined plan.

A prenuptial agreement details the assets that belong to each spouse as "separate" property and the assets that will be "marital" property. In general, when the marriage ends, the separate property stays with its original owner, and the marital property is divided between the spouses in the manner described in the prenup. In order for the agreement

to be enforceable, each spouse must disclose all of his or her assets to the other, and the agreement should be signed well in advance of the wedding. A prenup signed at the rehearsal dinner probably won't hold up later on.

Regardless of whether a couple enters into a premarital agreement, each spouse should be sure that his or her estate plan is up to date and provides for (or excludes) the surviving spouse as a beneficiary. Also, if either spouse was previously divorced, the couple should ensure that neither their estate plans nor any beneficiary designations—such as those for life insurance policies or retirement assets—leave anything to the former spouse.

TRUSTS & WILLS

In nearly every state, including New Hampshire, if a decedent's will leaves nothing for his or her surviving spouse or if the decedent dies without a will, the surviving spouse will be entitled to some of the decedent spouse's property. For example, assume a New Hampshire couple marries, and each spouse has children from a prior marriage, but



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- Mark Twain

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they have no children together. If the husband dies first and doesn't have a will, his wife will receive the first \$100,000 of the husband's estate, plus one-half of the balance. Or, if the husband dies first and has a will that leaves everything to his children, the surviving spouse can take one-third of the estate (including real estate), and the children will receive the rest—even though the will leaves everything to the children.

The couple can avoid these pitfalls by creating trusts in addition to their wills. A trust (often called a "QTIP" trust) can be set up so that when one spouse (for example, the husband) dies, the husband's property is held in the trust for the wife's benefit. The trust establishes boundaries on how the husband's money will be used (for example, the wife receives all of the trust's income, and possibly some of the principal, too). But the wife doesn't control the trust property, or decide where it goes when she dies. Instead, whatever is left in the trust on the wife's death passes to the husband's children (or other beneficiaries that he names). This type of arrangement gives comfort both to the surviving spouse, since she'll know

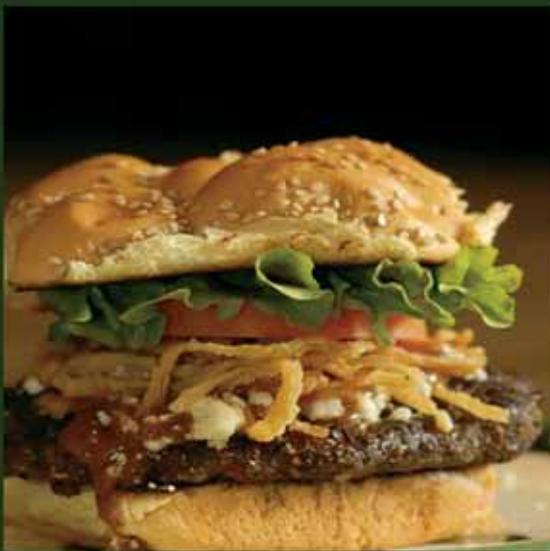


exactly what she's inheriting and entitled to, and to the children, who won't need to worry that their stepmother is going to take all of Dad's money and run off with the tennis pro from the club.

Later-in-life marriages bring with them a unique set of challenges, including the protection of lifetime accumulations of wealth and the concerns of adult children from prior marriages. Carefully considering financial

and estate planning matters before the marriage—and discussing them with the children—will make the road to marital bliss much smoother. 🐛

Amy Kanyuk speaks and writes frequently about tax and estate planning topics and has been selected numerous times by her peers for inclusion in *Best Lawyers in America* in the fields of tax law and trusts and estates.



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