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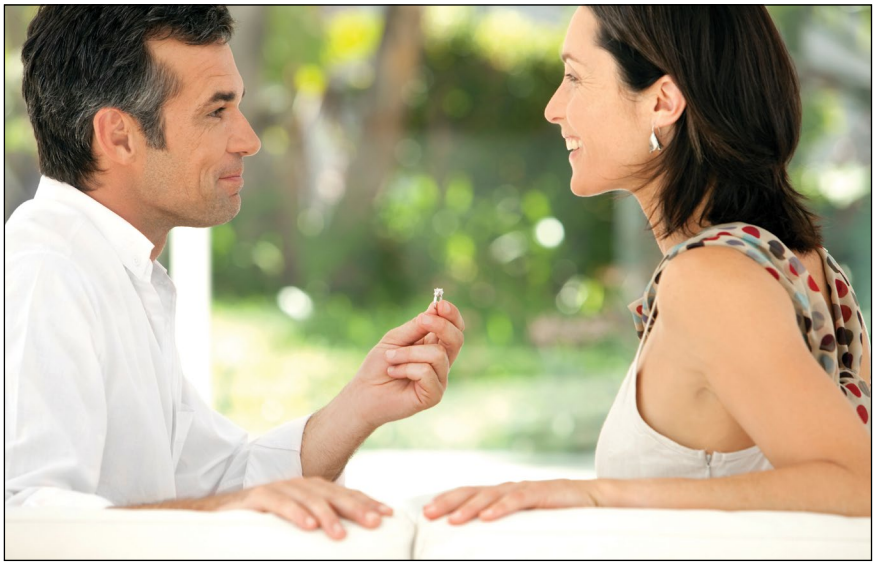
Remarrying? Always consider a prenup

People who are remarrying after a death or divorce should almost always strongly consider having a prenuptial agreement.

When prenup agreements first became popular a generation ago, most people thought of them as a way for wealthy people to protect themselves in case they were marrying a gold digger. Today, however, prenups don't have the same connotation. They're often used as a straightforward financial and estate planning tool, especially by mature couples who are entering into a second marriage.



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The number one reason that people enter into prenups when they begin a second marriage is that they have children from their first marriage, and they want to make sure the children will be well provided for in case they get divorced or in case they die before their new spouse.

While blended families can be great, and you might feel sure your new spouse will treat your children like his or her own, things can change over time, and it's wise to protect your children both legally and financially.

For instance, even if you say in your will that all your assets will go to your children when you die, that might not happen. In almost every state, your spouse can claim a significant share of your assets – typically 30 to 50 percent – *even if* your will says that they should go to someone else.

However, if your spouse signs a prenup saying that he or she won't make such a claim, you generally won't have to worry about your children receiving the inheritance you intend for them.

Another issue is that, if you have assets in a 401(k) account, those assets will go to your spouse if you pass away… *even if* your beneficiary designation form says they should go to your children or other family members.

This provision can't be waived in a prenup – it has to be waived in a notarized document after the marriage – but a prenup may be able to

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Be careful with personal injury claims at divorce

If you've been injured recently, and have filed (or are thinking of filing) a personal injury lawsuit – but you have also filed (or are thinking of filing) for divorce – it's extremely important to coordinate the two types of claims.

That's because the way the personal injury lawsuit is handled could have a big effect on how much of the proceeds you'll have to share with your spouse in the divorce proceedings.

At a minimum, you should be sure to tell your personal injury lawyer all about the divorce, and tell your divorce lawyer all about the personal injury claim.

The rules differ a great deal from state to state. For instance, in some states, it makes a big difference whether you were injured before the divorce was filed, or while it was pending, or after it became final. In others, it makes a difference during which of those periods the lawsuit was filed or settled.

A personal injury award often consists of multiple components, and those individual components can be treated very differently in a divorce. For instance, an award can include payments for:

- Your personal pain and suffering as a result of the injury,
- Your lost wages, if you missed time at work,
- Your medical expenses,
- Your spouse's losses as a result of your injury, and
- Property damage (such as if your car was totaled in an auto accident).

As an example, a court might decide that your pain and suffering is personal to you, but the car was marital property if it was jointly owned, and your lost wages and medical expenses should be divided as though they were ordinary wages and bills that came in during the marriage.

You might be able to get a better net result if you coordinate the filing or settling of the lawsuit with the timing of the divorce. You might also be able to settle the lawsuit more favorably by allocating more of the proceeds to items that are less likely to have to be shared with your spouse.

Redo your beneficiary designations if you remarry

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We've often reminded people that it's important to update all your beneficiary designations after you get divorced – including wills, life insurance policies, bank and brokerage accounts, retirement plans, and so on.

One thing that gets less attention, but is also very important, is to change your beneficiary designations again if you remarry. Failing to do so can create problems if something should happen to you unexpectedly.

For instance, a New Jersey man named Michael Fox bought a $100,000 life insurance policy in 1992 and named his wife as the beneficiary. After he got divorced, he changed the beneficiary designation, naming his sister instead.

Michael remarried in 2012. His new wife, Evanisa, was a Brazilian national. As part of his sponsorship of Evanisa's citizenship application, Fox agreed to support her at a minimum of 125 percent of the poverty level. But he never updated his life insurance policy, and he was killed a few months later in an automobile accident.

Evanisa went to court. She claimed that it would be very difficult for her to support herself without the life insurance proceeds, and that the court should presume that Michael meant to change the beneficiary to her.

But the court said no. It ruled that unless Michael affirmatively changed the beneficiary to Evanisa, the money should go to his sister instead.

Interestingly, New Jersey has a law that says that if a person names a spouse as a beneficiary in a life insurance policy and then gets divorced, the beneficiary designation is automatically revoked. Evanisa said the reverse should also be true – if a person gets married, it should be assumed that the new spouse becomes the beneficiary. But the court said that's not how the law was written.

Remarrying? Always consider signing a prenup

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impose consequences on a spouse who refuses to sign a waiver after the wedding.

There are other ways to protect children, too, including the use of trusts. But a prenup is often a critical piece of your financial plan for protecting the next generation.

If you don't have children yourself, but your new spouse does, you might want to consider whether you want all your wealth to eventually go to your stepchildren. You might want to use a prenup to make sure that certain assets will go to other relatives, such as siblings or nephews and nieces.

Even if neither spouse has children from a prior marriage, a prenup can still make sense. Keep in mind that, statistically, the divorce rate for subsequent marriages is much higher than for first marriages. Some studies show that about two-thirds of second marriages end in divorce, and about three-quarters of third marriages do.

Many people who enter into second and third marriages have worked for a long time and bring significant assets to the table. Often, both spouses will have accumulated some degree of wealth. A prenup that says what will happen in the event of a divorce can make matters far easier if things don't work out.

Many second-marriage prenups say that if there's a split, both people will keep the assets they brought to the marriage. This makes things simple, and can provide a certain amount of comfort and security to everyone.

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Here's another consideration: If one spouse comes to the marriage owning a share of a family business, it can be very smart planning to say in a prenup what will happen to that spouse's share in the event of a death or divorce. That way, the business can keep running without any uncertainty about the terms of ownership.

Also, if one spouse is a partner in a business, the business might have a buyout agreement saying that the other partners can buy out the spouse's interest if he or she retires or passes away, or in certain other circumstances. A prenup can work in tandem with this agreement to make things easier for everyone.

In general, if you're thinking of remarrying, it's a good idea to talk to a lawyer about the ways a prenup can be used to further your financial and family goals.

Shared custody more important than a shorter trip to school

When a Pennsylvania couple divorced, they were given shared custody of their son. Sometime later, the father moved to a new community 11 miles away. As a result, when the son was staying with the father, he had a longer trip to school. (The couple disagreed about how much longer the commute was, but it was arguably up to 40 minutes.)

The mother went to court and argued that she should be given primary custody because the longer commute was disruptive, and prevented the child from developing stable roots and routines. A judge agreed with her. But the father appealed.

On appeal, the court sided with the father, and said the shared custody arrangement should continue. The court acknowledged that a 40-minute car ride could be an inconvenience, but it said there was no evidence that it was causing any harm to the child.

In general, the court said, the value to the son of maintaining a strong relationship with his father outweighed the value of a quicker trip to school.

Husband's increased pension payments may end alimony

When Michael and Kathleen Krupinski divorced back in 1990, a court awarded Kathleen one-third of Michael's eventual pension benefits as a public school teacher, once he retired and began receiving the payments. Michael was also ordered to pay Kathleen $100 a week in alimony.

Michael continued his education after the divorce, and ultimately became a school administrator, which significantly upped his salary and the value of his pension. By the time he retired in 2010, he was making almost three times the salary he'd been making as a teacher, and he started receiving much higher pension payments than he otherwise would have.

Because of this, Michael went back to court and asked to have his alimony obligation terminated.

A judge initially sided with Kathleen, noting that Michael was still able to afford the alimony payments.

But on appeal, a court said that in light of the increased pension benefits, the alimony could be ended if Kathleen didn't still need it to maintain the lifestyle she had enjoyed during the marriage.

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College tuition help conditioned on family counseling

A father who has an estranged relationship with his teenage son can refuse to contribute to the son's college expenses unless the son agrees to participate in family counseling, according to a New Jersey court.

The father and mother had divorced years earlier, and the divorce agreement said that both parents would contribute to the children's college expenses based on their ability to pay at the time the children were ready for college.

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After the divorce, the father's relationship with the oldest child soured. The father wanted to make things better, but the son refused to speak to him.

The son enrolled at a private out-of-state school that cost $22,000 a year after financial aid. The son (and the mother) demanded that the father contribute to the cost. But the father refused to pay anything as long as the son wasn't trying to have a relationship with him.

The court sided with the father. It said that while a parent *could* be required to pay for college despite an estranged relationship – especially if the parent were at fault – this case was different because the son was the one who refused to participate in counseling.

According to the court, a parent-child relationship is "a two-way street," and the son's behavior was "fundamentally unfair."

The court made two other interesting rulings. One was that the son couldn't dictate how much the father had to pay based on where he chose to go to school. The court said the father – who had a modest income – should only have to pay what he could reasonably afford, and if that amount didn't cover the son's college costs, the son would have to attend a less expensive school.

The court also noted that there were two younger children in the family, both of whom were also planning to attend college. It said that the amount the father had to contribute to the oldest son's education should be reduced to reflect the assumption that the father would contribute equal amounts for the other children.