

Prenuptial Agreements for Seniors

Why is it important to have a prenuptial agreement for a second marriage?

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Due to an increased life expectancy, a 50% or higher divorce rate in the United States, and an increasing amount of serial marriages, prenuptial agreements are now widely accepted.

It is very important for seniors to approach the idea of a prenuptial agreement with an open mind. It must be emphasized that a prenuptial agreement doesn't mean you're planning to divorce or that you do not trust your new spouse. Instead, senior couples are more likely to recognize the seriousness of their upcoming commitment of marriage. The reality is that individuals in middle and later life are likely to have more significant assets than younger couples. Additionally, seniors often have important financial obligations in the form of alimony or child support payments, and have likely amassed separate property estates (assets, such as property and money) that they want to leave to their children. Therefore, seniors walking down the aisle often have more to protect than younger couples.

In order to provide a solid foundation for their future marriage, seniors should consider sorting through their finances before they marry. They should also create a plan for how they will merge their economic lives with their new spouse. There are some very harsh consequences that can occur if a senior does not carefully plan for economic ramifications of a potential late-life divorce. Although many people view prenuptial agreements as "unromantic," life is not always a romantic experience. At this later stage of life, seniors should carefully prepare a detailed and comprehensive prenuptial agreement that addresses every aspect of their finances.

What are the major drawbacks seniors encounter when they remarry?

The number of men and women who are 65 and older and choosing to live together without getting married has nearly doubled in a decade. So what stops so many seniors from taking the plunge of getting remarried? The primary factor is that they don't want to get financially destroyed in a second marriage. Outweighing even the desire for romance, or the religious or social blessing of marriage, many seniors are terrified of losing all of their assets in a nasty divorce.

The following are a list of common concerns that may prevent seniors from remarrying:

- losing vital benefits, such as their former spouse's pension payments, Social Security benefits, or medical insurance benefits if they get remarried

- putting their children's inheritances at risk
- many seniors who are recovering from traumatic marriages and divorces sometimes vow not to marry again- they may have learned the hard way that even with prenuptial agreements, marriages that end in divorce can create costly legal battles and all-out financial warfare.

Although a prenuptial agreement may address some of these concerns, many unmarried seniors are instead opting for cohabitation agreements. Cohabitation agreements help to keep assets separate and outline inheritances while the couple lives together.

If you have questions about whether a prenup would adequately address your financial concerns or if cohabitation is your best option, you should speak with a family law attorney that has a lot of experience drafting prenuptial agreements.

What are some common sense tips to use when you negotiate a prenuptial agreement?

The old saying goes, “a little bit older, a little bit wiser.” If your next marriage isn’t your first one, then you have probably learned that marriage is more than romance – it’s finance. You don’t have to be a multimillionaire to consider the benefits of a prenuptial agreement. Think of it as a business arrangement or as an insurance policy to help remove some of the emotional angst of getting remarried. A prenuptial agreement and the earnest discussions that go with it can help ensure the financial well-being of the marriage.

Under the divorce laws of New Jersey, courts divide assets based on what it considers an “equitable” or fair distribution. The judge would take into consideration such factors as: the length of the marriage; whether there are children born of the marriage; the couple’s age, health and job skills; the income of each spouse; and other factors.

With those facts in mind, it’s easy to see why a prenuptial agreement could be one of the best decisions that you make in your life. Here are some tips to successfully deal with some of the thorny issues that surround a prenuptial agreement:

Discuss the subject early. The mention of a prenuptial agreement shouldn’t come as a surprise if you and your companion have been open with each other as the relationship became more serious.

Hire separate attorneys. To help ensure that a prenuptial agreement will be legally enforceable, both spouses must hire separate lawyers. Use only matrimonial lawyers who are familiar with prenuptial agreements. Moreover, make sure that your lawyer has at least ten years of experience. Ask your attorney at the first meeting what the anticipated charges will be.

Get a witness. Make sure the agreement is in writing, and ensure that the signing is witnessed by a lawyer.