CONTRACT MAY BE A SMART IDEA IF YOU MARRY LATER IN LIFE

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In sickness & in wealth: Why prenups rule

("In Sickness & In Wealth" is a four-part series from NowU that explores the financial concerns associated with marrying later in life. In the first article, we look at premarital agreements.)

MARRIAGE USED to be a young person's game, but not anymore. Today, the median ages for a first marriage in the U.S. is 27 for women and 29 for men, up from 23 and 26 in 1990, and 20 and 22 in 1960.

Coupled with late-in-life divorce rates — divorces among couples over 50 have doubled in the last 20 years, according to a 2012 study by Bowling Green State University — the data suggest a growing population of elder singles, which may lead to more marriages later in life.

With finances consistently cited among the leading causes of divorce, money can be a major challenge for these couples, who in most cases will enter marriage with more wealth and assets than their younger counterparts.

The first step for any couple contemplating marriage — should you get a prenup?

A Prenup Can Equal Peace of Mind

Linda Aland met her second husband at a surprise birthday party when she was 48. Immediately, she was in love and, just 19 days later, she married him.

Before she tied the knot, however, she signed the dotted line. "I was so in love with this man that I didn't think I needed a premarital agreement," said Aland, a Dallas-based attorney who specializes in family and civil trial law. But a friend advised her to get one, "and I'm really glad I did."

Now 66, Aland is still happily wed. Her prenuptial agreement is one reason why. Knowing her money is secure, she said, makes her marriage secure. "Because I have a premarital agreement, for the last 19 years, whatever I've earned has stayed my money," explained Aland, who has three children from her first marriage. "Marriage ends at death or divorce; I don't plan to die any time soon, and I hope I don't get divorced, but I feel better knowing my assets are safe either for my own retirement or for passing onto my children."

In 2013, the American Academy of Matrimonial Lawyers surveyed 1,600 of the nation's top divorce lawyers and found that 63 percent have seen an increase in prenuptial agreements.

That's good news, according to Judy Woodward Bates, the Birmingham, Ala.-based author of "Bargainomics: Money Management by the Book." Although she married her husband before she knew the virtues of premarital agreements, she has since become their biggest fan, having witnessed the consequences of proceeding without one.

"A boomer friend of mine entered into a second marriage without a prenup," said Bates, 61. "A few years into his new marriage, my friend died intestate on the operating table during what was supposed to be a minor procedure. His new wife got everything and immediately fired every relative who worked for the (family) business, including his two sons, and then quickly drained the company's assets."

At worst, a prenup gathers dust in your safe deposit box, unused. At best, Bates said, it can protect your wealth — and perhaps even your legacy.

An Agreement Delivers Insurance and Assurance

There are two reasons to have a prenuptial agreement upon entering a late-in-life marriage, according to David Wilkinson, a San Diego-based family law attorney. One is protecting assets. The other is protecting people.

Simply put: Prenups provide both insurance and assurance.

"As people enter retirement age, they are likely to grow more and more reliant on investment income, such as 401(k) and IRA distributions, or fixed income, such as Social Security and pensions," Wilkinson said. "Parties no longer have the flexibility to work longer or increase their earnings."

In addition, he said, "seniors are more likely to have children of prior marriages, grandchildren or other relatives they intend on leaving property to in their will. A premarital agreement can clarify all of these issues."

Important Questions to Ask Before You Tie the Knot

Prenups detail what pre-marital assets exist, to whom they belong and how they'll be divided upon dissolution of the marriage, either at death or divorce. However, they also can dictate marital terms, including who will manage the couple's finances, how much each spouse will contribute to shared expenses and debt, who owns income and assets acquired during the marriage, and whether certain circumstances, such as infidelity, warrant alimony.

To determine what your prenup should encompass, ask the following questions:

- What do I own and/or owe? The foundation of a legally sound prenup is disclosure, according to Wilkinson. Before meeting with an attorney, couples should make a list of their assets — from money markets and retirement accounts to real estate, vehicles and valuables. They also should disclose their debts.
- Do I have children or charities I want to provide for? Premarital agreements go hand-in-hand with estate planning, according to Aland, who says inheritances and other bequests should be clearly outlined.
- What do I want to protect? If your state is what's known as a "community property state," Aland pointed out, assets and income acquired during a marriage belong to both parties — unless specified otherwise in a premarital agreement.
- Who makes more money? The best premarital agreements ensure an equitable marriage, explained Aland, who recommends that prenups facilitate financial fairness by dictating that parties contribute to family finances proportionately based on their respective incomes.

'Tread Lightly' When Asking for One

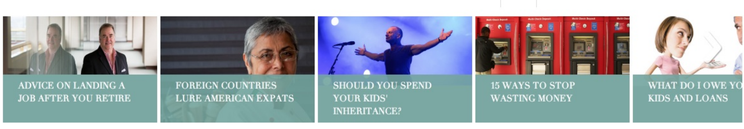
Typically, the most difficult thing about a prenup isn't negotiating its terms. Rather, it's broaching the subject in the first place.

"Prenups can be relationship deal breakers, so tread lightly," advised relationship expert April Masini, author of the advice column "Ask April." "Be clear and honest, but try to remove emotion from this business part of love and marriage."

To have a prenup conversation that is both emotionally and financially successful, Masini said, couples should talk early and often, allowing at least six months to draft a prenup with the help of attorneys. They should also talk on neutral ground — for instance, the kitchen table or a coffee shop — and never in the bedroom or over alcohol.

What if your partner is evasive? It could spell trouble. "Later life requires some of the toughest decisions ever," Masini said. "If you're about to marry someone who can't roll up their sleeves and deal with a prenup, this may be a sign that they're going to try and stick their head in the sand when other difficult situations arise."

Coming soon: A look at how couples manage their money.



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