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Jane Bryant Quinn

Prenups Are Hard To Write: Trust Me, I Know

By [Jane Bryant Quinn](#) | Jun 21, 2010 |

The June wedding season isn't just for the young. Plenty of older couples are marrying, too, which raises the rigors of the pre-nuptial agreement.

I was a widow when I remarried two Junes ago and can testify that pre-nups aren't for sissies. They're essential when each of you has children from a previous marriage to protect. But when you start talking terms, you might find that you have different ideas about what the contract should say.

Love will triumph. Still, start the negotiation early so you can get over any emotional stress. It almost always takes longer to resolve issues and deal with new ones than you originally thought.

There are also complications involving retirement accounts and long-term care that a pre-nup can't necessarily resolve.

If the bride and groom are of roughly equal wealth, and each is in comfortable circumstances, the pre-nup might be simple. You each could agree that, in case of divorce, you take your own property and walk away. In case of death, all your property could go to the kids from your previous marriage. Neither of you needs the other's support.

It gets complicated, however, when one spouse needs support or when one is richer than the other and there are existing children to consider. How much money (if any) should the wealthier person leave to the new spouse instead of to his or her own children? And if you have adult children, what will they think?

In theory, it shouldn't matter what the children think. It's your money, not theirs. But it matters a lot, emotionally. You want your kids to accept the financial arrangement and be as happy with the new relationship as you are.

By state law, your spouse is entitled to a specific amount of the marital asset — typically, up to one-half at divorce and one-third or one-half if you die. He or she gets at least that amount of money no matter what it says in your will.

A pre-nup changes that. You can sign away all your spousal rights or agree to a larger or smaller share.

Don't try to write the pre-nup yourselves. It's too important for amateurs. You each need a lawyer to advise you on every proposal's pros and cons. (You can use the same lawyer, however, if nothing is at issue and the lawyer agrees.)

Experienced lawyers know ways of melding clashing interests. In a second marriage, for example, what if a well-to-do groom wants all his property to go to his kids while the bride wants her less-affluent kids to get at least something out of the relationship? One solution: the husband could take out a permanent life insurance policy, payable to the wife's children. Or payable to the wife, if she will need support.

What if the wife owns the house that you both move into? If she wants its value to go to her kids after her death, the pre-nup could give her husband the use of the house for life. You can also use trusts to support a spouse for life.

If a small business is involved and you have a business partner, you'd want enough life insurance for the partner to buy out your spouse if you died. And you'd want the business to stay out of your spouse's hands if you divorced.

You might be surprised to learn about the law involving retirement accounts. You can leave an Individual Retirement Account to anyone you want. But by federal law, your spouse has a right to your 401(k) and other non-IRA benefits. You can't leave that money to your kids unless your spouse signs his or her rights away.

That can be done, but not before marriage. In the pre-nup, you'd agree to sign the proper waivers immediately after the wedding.

So here's a nightmare that only an obsessive financial reporter could think up: You say "I do," waltz from the wedding ceremony to the reception, trip on the dance floor, break your neck and breathe your last. Your new spouse inherits your 401(k) or pension trust and can't give it back to the kids without paying a gift tax.

At my wedding (I blush to say), I asked a lawyer who attended to drop his notary stamp in his pocket. My lovely groom signed the waiver then and there.

One thing the pre-nup cannot solve is the cost of long-term care. Each of you might agree not to claim the other's assets. But if one of you enters a nursing home and doesn't have enough personal assets, the other might have to pay, under state laws regarding spousal support. To protect your finances, each of you should agree to buy long-term care insurance.

You have to disclose all your assets when preparing a pre-nup, so the partners will know exactly what they're getting and what they're giving up. If one of you hides a substantial amount, the other could challenge the agreement.

But as long as you made full disclosure, a pre-nup is almost impossible to break — even if you were bullied into signing. The judge will say, "You made your bed. . . ."

Jane Bryant Quinn

Jane Bryant Quinn is a leading commentator on personal finance, with books and columns read and trusted by millions. During her long career, she's established herself as America's most reliable voice for people trying to manage their money well. Her policy columns address matters of top concern to citizens, including investor protection, health insurance, Social Security, and the sufficiency of retirement plans. Her personal finance columns demystify money to help families make better decisions about their financial future. Jane's best-selling book, *Making the Most of Your Money*, is a comprehensive guide to personal finance, named by Consumers

Union as the best personal finance book on the market. The first edition, published in 1991, has been in print and popular, ever since. The third edition -- *Making the Most of Your Money NOW* -- was published in January, 2010. Jane's blog for CBS MoneyWatch is called [Make the Most of Your Money](#), and she also writes for her own website, [JaneBryantQuinn.com](#). Jane has worked extensively in television. She co-hosted an investment series, "Beyond Wall Street," which ran on the Public Broadcasting System. PBS also ran her own program, a personal-finance series called "Take Charge!" She worked ten years for CBS News, first on the "CBS Morning News," appearing twice weekly, then on "The Evening News with Dan Rather." She has also been a regular on ABC's "The Home Show" as well as a guest on "Good Morning America," "Nightline," "The News Hour with Jim Lehrer" and many other programs. Jane has many awards to her credit, including the Emmy Award for outstanding coverage of news on television and the Gerald Loeb award for distinguished lifetime achievement in business and financial journalism. She has also received many honorary degrees. She currently serves on the board of Bloomberg LP, the financial services company. She has also served on the board of the Harvard School of Public Health, the Jerome Levy Economics Institute of Bard College, and her alma mater, Middlebury College. She's a member of the Council on Foreign Relations. With her husband, Jane recently founded a company called Main Street Connect, which is bringing online local news to towns and cities that are losing their local newspapers.