

# How essential are prenuptial agreements for seniors?

By Linda T. Cammuso

When my clients plan to marry, I advise them that a prenuptial agreement should be considered before they take that life-changing step.

When individuals have reached their senior years, the prenuptial agreement takes on new significance, as much more may be at stake than people realize. Your net worth may exceed that of your future spouse, and by age 50+ you may have accumulated:

- A lifetime of savings;

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- Retirement funds;
- Ownership in, or profits from the sale of, a family business;

- Home equity;
- Money from a divorce settlement or inherited from a deceased spouse; and

- Inherited property that you want to remain in your family.

Even if your net worth is equivalent to that of your future spouse you may have different goals in mind for your assets when it comes to spending in your retirement years, planning for long-term care costs and inheritances for your respective families.

When two people marry, they immediately have legal rights in each other's assets in the event of divorce or death. Even if there are already wills, trusts and other ownership arrangements in place, the legal rights of a spouse trump many of these dispositions. Children or grandchildren's inheritances could be substantially diminished in the event of your passing. A prenuptial agreement will go a long way to help protect your family and ease their concerns about your coming marriage.

How to best protect your assets should be given serious consideration

before you enter into marriage. Between the ever-growing divorce rate and the costs of funding long-term care, taking the step to get married exposes your respective estates to many possible expenses.

It is critical to understand that even the best prenuptial agreement does not protect your assets from each other's long-term care/nursing home costs. MassHealth (the Massachusetts Medicaid program) does not allow spouses to "contract around" their rules about the countability of spousal assets. Accordingly, it is crucial that spouses wishing to protect assets engage in proper estate planning.

True, no one can predict the future, but they can prepare for it. The process of structuring a prenup opens both parties up to an honest and enlightening financial discussion before the marriage. The agreement delineating how resources will be divided upon divorce or death is

a way to avoid protracted legal battles in the case of divorce, separation or death.

If you are a senior and are considering marriage, evaluating the benefits of having a prenuptial agreement — with an attorney skilled in estate planning and prenuptial agreements — should be a fundamental part of your marriage plans. Each party should have a separate attorney to represent respective interests in structuring a prenup. If you married before negotiating a prenup, you may resolve this with a postnuptial agreement and proper estate planning with a qualified attorney.

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