

SPECIAL REPORT: Getting Married and Managing Wealth

A prenup can place some guardrails around what property should be considered separate before you marry.



Some couples headed to the altar will go on to build a prosperous financial life together. Others will bring wealth into the marriage. But before tying the knot, couples should tackle a knotty issue that can be difficult and is often sidestepped—that is, talking with your significant other about managing wealth created before and during the marriage.

As with many things, knowledge is powerful, and it will likely be beneficial to gain an understanding of each other's perspective and beliefs early on in order to avoid conflicts later.

For richer or poorer, financial issues are among the leading causes of marital disputes. Nearly three-quarters of the couples participating in a [2021 survey](#) said that financial decision-making is an ongoing pressure point.








Managing wealth can be a critical discussion for the approximately 6,800 couples married each day in the United States in 2022 (around 2.5 million total).

One or both sides bringing a large amount of wealth into a marriage may be advised to consider a prenuptial agreement (prenup) or a trust to help separate and protect some of those assets. Individuals—particularly those with a high net worth—should be proactive, acknowledging that prenup discussions are common, help respect and protect both parties, and can enrich relationships.

Prenups often are recommended for first marriages but can be invaluable for second marriages or marriages later in life, when both partners may have established lifestyles and have already accumulated significant wealth. They may also be paying child support or alimony and wish to keep those obligations separate from marital assets.

Parents and grandparents with high net worth also may have an interest in protecting an inheritance, family property or business and could set up a trust on their own to shield those assets for future generations.

Key Takeaways

-  Marriage may be a love story, but it is also a legal contract with potentially significant financial implications.
-  Prenuptial agreements can be useful tools for couples with significant or unbalanced assets.
-  If you do not start marriage with a prenuptial agreement, it is not too late. Couples can still do financial planning and craft a postnuptial agreement or formalize an estate plan.
-  A postnuptial agreement or a detailed estate plan should be updated periodically, especially after the birth of a child or other life-changing circumstances.
-  Determine whether both or one of you will be making major financial decisions.
-  A second or subsequent marriage with children will require careful planning to protect inheritances intended for specific individuals.
-  Trusts can be created unilaterally before marriage. Depending on the trust, wealth, property, and other business interests placed in a trust can be considered as owned by the trust rather than by one of the spouses and therefore not considered marital property so long as it remains separate from marital assets.

The Why, What and Who of Prenups

Why Begin with the Conversation?

An overarching benefit of a prenup is that it encourages partners to have crucial discussions about wealth and financial goals, helps clarify attitudes toward spending and saving, and can help identify current debts or known future obligations, such as a promise to help someone pay for school or a special gift planned for someone about to graduate.

One of those conversations can be about whether to use joint or separate bank accounts, thereby setting up some guardrails on marital versus separate property. For example, part of each paycheck could be directed to a joint account used to pay for joint expenses, with another part going to an account or accounts that are agreed to be separate from the marital estate.

Other items you can discuss include beneficiary designations, powers of attorney, and potential consolidation of your investment strategies.

The results of these conversations can help determine the details of your prenup.

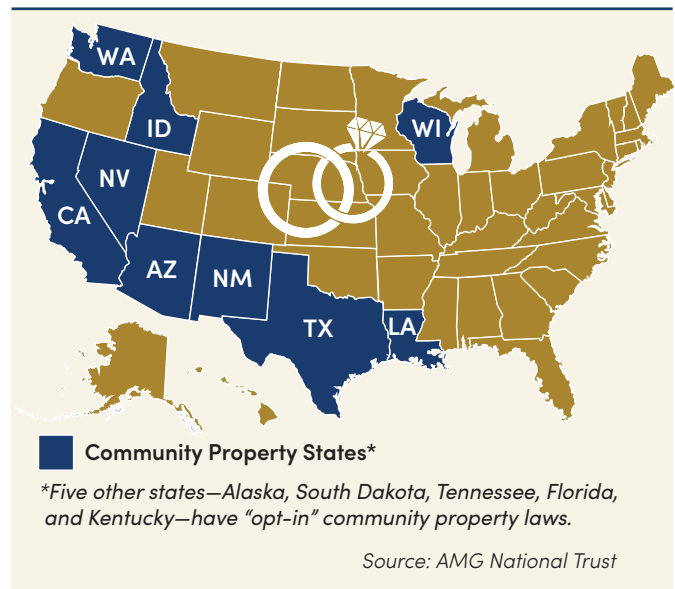
What Is a Prenup?

A prenup is a legal contract signed before the “I dos.” It should not be a list of marital duties, such as who will be doing the cooking or making the bed. Rather, prenups are generally designed to outline the rights and responsibilities of each spouse should the marriage end, which often includes listing every asset and debt for both parties and indicating what happens to them.

The Purpose of a Prenup

In the event of divorce or legal separation, a prenup puts the decisions about rights, responsibilities, and asset division in the hands of both spouses. This can be particularly beneficial in community property states, where a court could decide that a prenup overrides the state’s requirements to otherwise split all assets 50/50 and determine spousal support.

In contrast to community property states, the majority of states are common law property states where, unless agreed to by the parties, marital property is distributed in a manner that the court deems “fair” to both parties, which is not necessarily equal. This is called “equitable distribution.”



Who Needs a Prenup?

To protect wealth being brought into the marriage or to shield wealth expected through an inheritance or business, you may want to consider a prenup. Another situation that could lend itself to a prenup is when one engaged person is significantly older than the other and already has significant wealth or perhaps children from a previous marriage. The decision may also come down to whether you want to single out assets that, if commingled, would make your financial situation uncomfortable if you were to eventually divorce.

Reasons To Have a Prenup

- ✓ Foster communication about financial goals and managing wealth.
- ✓ Separate certain assets that you already have and protect assets that you anticipate receiving, such as an inheritance or a stake in a business.
- ✓ Did an earlier marriage end badly? A prenup can give you peace of mind about the path ahead.
- ✓ Pass along certain assets to children from this or a previous relationship.
- ✓ Are you paying or receiving alimony or child support? You can erect a wall between payments or income and marital income.
- ✓ If significant debt is present, specify how it will be paid off.
- ✓ Determine how you will divide specific assets acquired jointly during marriage.
- ✓ Control how those assets are distributed in the event of a divorce.
- ✓ Allows a couple to control their assets and potentially reduce time spent in divorce court.

Source: AMG National Trust

What Can Go in A Prenup?

Certainly, assets and debts are the primary concerns, but a prenup can cover a wide array of topics, for instance, who would get custody of the family pets. It is also not unheard of to specify what either spouse will be allowed to share on social media without the approval of the other, or the possibility of random drug testing.

Started in Egypt?

One of the earliest known prenups is from Egypt about 2,000 years ago. Back then, prenups were used to establish the property each spouse was to bring to the marriage and were often made by the in-laws rather than the couple.

Negotiating a prenup may feel like a nuisance, but it can be better to include as many details as possible, such as:

- **Core financial disclosure.** Identify all assets and liabilities, but also specify everything that will be considered separate from marital finances. These can include family business interests; distributions from trusts established by relatives; and family assets such as property, art, furniture, or jewelry.
- **Gifts and inheritance.** In the event a family member presents you with a sizable windfall during marriage, will it be considered separate property? If a property is purchased with assets accumulated before marriage, would that also remain separate? A commingling of assets, even if by accident, can negate the separation of an asset.
- **Privacy and confidentiality.** You can establish confidentiality guidelines regarding financial matters and minimize potential public exposure on social media during divorce proceedings.
- **Tax optimization.** Your advisors may recommend whether to include efficient strategies to potentially mitigate tax liabilities resulting from a division of assets, whether during marriage or in the event of divorce.
- **Handling of estate.** A misconception is that prenups deal solely with marriage and divorce. They also can relate to death by enhancing your estate plan to protect your heirs. For instance, you can establish whether to waive rights to specific assets and property so that a portion of the estate can pass according to the wishes of a deceased spouse.
- **Alimony.** The agreement can establish temporary support after a divorce filing; suggest a dollar amount for alimony; and specify the length of time that the

support will continue. Note, however, that a court generally has the final word.

- **Support.** How will attorney's fees, spousal support, retirement/pension benefits, or death benefits be split?
- **Children.** Provide for either your own or your spouse's children from a previous relationship, including inheritance.
- **Pets.** Sometimes referred to as "petnuptials," these agreements can cover pet-related issues such as custody, animal care insurance, and grooming.
- **Career compensation.** An amount can be agreed upon for a spouse who has put a career on hold to raise children.
- **Debts.** Consider who should be responsible for certain payments and liabilities acquired during the marriage (credit cards, loans, bankruptcies and foreclosures, or household bills, memberships, and subscriptions).
- **State jurisdiction.** Outline what will happen if you marry in one state but as a couple move to another state and later seek a divorce. What if you separate and your spouse moves to a state where the divorce laws would be more in their favor?
- **Mediation and arbitration.** Agree how to resolve disputes related to the prenup.
- **Equalization/lump sum payment.** This often arises when one spouse has far more wealth than the other. It is separate from alimony and the division of assets and is intended to put both parties on a more equal footing during divorce proceedings. You may want to stipulate that it is a fixed amount from separate assets, that it can increase based on the number of years of marriage, or whether it can be reduced due to certain conduct.
- **Modifications.** It may be beneficial to determine whether modifications of the agreement can occur or under what circumstances the agreement might be allowed to expire.



Issues you may want to exclude:

- **Child custody, support, and visitation.** Custody, parenting arrangements, and basic child support stipulations for children of the current marriage are typically left to the court, regardless of the existence of a prenup. Each state has its own formula for calculating the total child support obligation and how it might be split between the parents. Factors affecting the calculation can include each parent's income, the number of children, whether there is a primary custodial parent, and the children's time spent with each parent.
- **Personal issues.** Generally, prenups are in large part used to address financial matters, and a court is unlikely to enforce personal issues, such as either spouse agreeing to maintain a specific weight, hair color, or diet; whether you must spend time with certain relatives; or even where you have to vacation. If you feel agreement is needed on topics such as these, you should consult an attorney.



Prenup Effectiveness

The laws on prenups are controlled by each state and can vary. The details can become complex—particularly when significant assets are involved—so you should consult an attorney when considering one. Building a compliant, enforceable agreement, therefore, can be difficult, and, despite the best efforts of those involved in drafting the prenup, the decisions reflected in it are not always upheld. Down the road, either party could still challenge the agreement. Final acceptance and effect of the prenup usually still ultimately falls to the court.

Protect Yourself, Even Without a Prenup

The majority of couples—about 85% of those married or engaged—reported that they did not have a prenuptial agreement, according to a 2022 poll. The same poll indicated a potential shift in attitudes, as around 40% of adults contacted said they support such an agreement, and about 35% of unmarried adults said they would be likely to sign one.

Whether you choose a prenup or not, there are still some best practices to follow.

1. Keep any agreements and other important papers in a central location that is easily accessible, for instance, in a home safe, an attorney's office, or another secure location. Also consider keeping copies.
2. Create an estate plan and update it periodically to reflect financial or other changes. If a prenup is not in your future, your advisor may be able to suggest a trust or other option to help preserve family wealth.
3. Keep any separate assets truly separate. If you receive a gift or inheritance from, say, a beloved aunt, depositing it in a joint account or using it to purchase a marital asset could jeopardize its separate status.
4. Keep detailed records of all nonmarital, separate property as proof of how those assets were handled.

What About a Trust to Protect Assets?

A trust is an estate planning tool and may help protect personal assets from becoming marital property. Unlike with a prenup, your partner's consent is generally not required to create one. You can unilaterally establish a trust before marriage. In some instances, a trust may be of use in pre-marital planning. Your advisor can work with your estate planning attorney to help identify the [type of trust](#) that may meet your needs.

An appeal of trusts to parents and grandparents is that they may shield assets intended one day for their children and grandchildren. In addition, a trust can be beneficial for the purposes of privacy and probate avoidance.

Another key element: If your prenup is invalidated by a court, a trust may provide a layer of legal protection for assets in the trust that have remained separate from marital assets. There can be numerous factors that dictate how to proceed, so consult an attorney if you're considering such a trust.

Considerations When Marrying Later in Life

The older and more established you are, the more important a conversation with your partner becomes about how to merge your financial values and priorities. How have you both been managing money up to now? Is one a saver and the other a spender? Prioritize what matters most to you, such as savings goals and spending limits, as well as the expenses you will share or pay individually.

Rather than deciding to maintain either combined or separate accounts, the outcome that best meets your needs may be a hybrid of separate accounts (for reasons such as paying off individual loans or debts, alimony from a prior marriage, or child support) but also joint funds to save for vacations, fund a new mortgage, or pay shared household expenses.

Tip

If you maintain separate accounts, consider how that money would be accessed in the event of a family emergency.

Determine your tax filing status

Married couples have the option of filing jointly or separately on their federal income tax returns. Joint filers generally will receive higher income thresholds for certain tax breaks and deductions. They also may qualify for tax credits for earned income, education, adoption expenses, and child/dependent care.

Also note that newlyweds' tax refunds may be delayed if the names on their returns do not match the names on file with the Social Security Administration. More information on updating your legal name can be found [here](#).

Comparing Standard Deductions

Joint filers are eligible for a standard deduction of \$27,700 for the 2023 tax year (\$29,200 for the 2024 tax year) versus \$13,850 for those filing separately (\$14,600 for 2024).

A spouse with a large amount of out-of-pocket medical expenses may benefit from filing separately because the Internal Revenue Service allows you to deduct only the amount of those expenses that exceed 7.5% of your adjusted gross income. That threshold may be easier to meet based on one income versus two. Consider consulting a tax professional when doing your tax filing.

Age differences. Significant age gaps between spouses can raise concerns in estate planning, for instance, whether you need your assets to last another 20 years after retirement or for far longer.

Long-term care. Health care and how to pay for it can be an issue for couples, such as whether both are receiving insurance through an employer or have retired. Also, married couples are generally responsible for each other's medical bills incurred during the marriage, which are estimated to average \$11,300 per person annually for those age 65 and above. To protect against those costs, a prenuptial agreement could include a provision requiring long-term care insurance or a level of health insurance to be maintained.



Second Marriages and Blended Estate Plans

About 40% of unions include at least one partner who has been married before. In these instances, it is absolutely critical to consider the impact of blending families as well as understanding potentially divergent financial expectations and estate plans. In these situations, it can be important to consider both a prenuptial agreement and updates to your existing estate plan.

Remarriage will likely shift some priorities in your estate plans, particularly if you are bombarded by competing needs among your current spouse and children from that or an earlier marriage. For instance, if there is a potentially large inheritance or family business in the mix, the children from the first marriage may worry that your current spouse could exhaust those assets after your death.

Anyone who has gone through a divorce is likely well aware of why you may be particularly partial to getting a prenup for a second marriage, especially if the previous marriage did not end well. You and your spouse are not only merging your lives; in a way, you both may be merging some of the complexities from your past, including alimony and child support payments. Placing boundaries around those complexities today can help block them from intruding into your union.

Is It Yours, Mine, or Ours?

Entering a second marriage means you will need to revisit your financial and estate planning to integrate current and future responsibilities.

- ✓ Who will be making the big financial decisions? Does the level of pre-marriage wealth determine the decision-maker?
- ✓ Do you wish to protect specific assets, business interests, or property as separate from marital assets?
- ✓ If you both own a home, will you move into one and sell the other? Sell both and buy a new home together? If homes are sold, how will the proceeds be split?
- ✓ Will both names be on the property deed of the primary home (or other properties)?
- ✓ Who will be responsible for paying property taxes, utilities, homeowner insurance, etc.?
- ✓ Will each spouse's debt be treated separately?
- ✓ Does it make sense to maintain separate or joint accounts for banking, credit cards, etc.?
- ✓ How will children from earlier marriages be taken care of? Will the same assets be divided among additional children you have together?
- ✓ Should you prepare a joint will, or do you each wish to maintain separate wills?
- ✓ Consider potentially conflicting expectations about the future ownership of a family property or business; retirement accounts, pensions, or stock options; bank accounts; and life insurance policies.
- ✓ Estate planning tools such as trusts, a living will, or power of attorney should reflect your lives today and potential future responsibilities.

Source: AMG National Trust

Concerns about assets are not a one-way street. It is also possible that both spouses in a second marriage bring significant assets (retirement accounts, pensions, stock options, property) or large debt into the union, further complicating how two lifestyles will become one.

Your estate planning (including a will, trust, beneficiary and guardian designations, and power of attorney) should answer those concerns to minimize the prospect of family infighting after one or both of you pass. We've created a [convenient estate organizer](#) of key documents to help you prepare.

Be Clear About Family Obligations

Funding your children's education and paying alimony are some of the big budget commitments both spouses may have made at the end of one marriage and before

the start of another. But you also may have made other promises—taking care of aging parents, for instance, or a large gift to reward a young graduate. Placing a dollar amount on each and explaining why they are important may help avoid potential misunderstandings or conflicts.

Surviving Spouse

State laws generally favor a surviving spouse, meaning that if he/she survives you, they stand to inherit a significant portion of your estate unless otherwise specified. A risk in not adequately updating your estate plan is that the surviving spouse may then be able to choose to ignore your wishes about your children or other heirs and leave everything to someone else.

In another scenario, the surviving spouse remarries, and at least some of your assets that went to the survivor are blended into the later union. Unless protected, part of your children's inheritance conceivably could be swallowed up by the new spouse's estate.

A preventative option you may want to consider for assets such as a home, car, or artwork and collectibles that you brought into the marriage is to specify that the surviving spouse retains its use until his/her death, when it would pass to your children.

Unequal Inheritances

Preparing loved ones for their inheritance through family discussions can go a long way toward limiting later discord, particularly in blended families where one parent may wish to retain significantly more legacy wealth for their side. While each family's situation is unique, some options may be:

- All children/grandchildren are treated equally after both spouses pass.
- The couple may decide to separate some specific assets for each other's children, and have the remaining marital assets split evenly.
- The children can be made aware that they will not receive their inheritance until attaining a specific age, or until the youngest among them reaches a certain age. Conversely, if any children are minors when the estate is divided, you may choose to identify someone to temporarily manage the assets for them, whether it is a former spouse, surviving spouse, or a trusted third party.
- When a second marriage results in additional children, depending on the ages of the children from previous relationships, additional assets may be set aside to see the younger children through school and give them a leg up after graduation.

Former Spouse Can Revisit Support

Alimony or support for children may be reopened to modification in instances where the financial situation of you or a former spouse improves significantly, for example, after a second marriage. Such an outcome could create a presumption that you have a new source of financial support.

The trigger for such a modification varies by state but can consider each spouse's living situation and the children's ages and needs. For instance, North Carolina allows child support modifications to be considered if three years have passed since the last order was entered, or if the parent paying support experienced a substantial change in circumstances, which is presumed with a 15% change in income.

Durable Power of Attorney and Advance Healthcare Directives

Estate plans can include a power of attorney (POA), which authorizes someone else to handle certain matters, such as finances or health care, on your behalf. If a POA is durable, it remains in effect if you become incapacitated, such as due to illness or an accident. Your POA should be someone in whom you have the utmost trust because they generally have no direct oversight other than you and could act in ways you did not intend.

Another estate planning tool is an advance healthcare directive (also known as a living will) that states your wishes for end-of-life care. Be aware that states will likely have specific requirements for advance healthcare directives and rules governing when they take effect.

Advance healthcare directives can be particularly important in outlining spouses' wishes within blended families, where each side may have different views on a loved one's care. Also consider including do-not-resuscitate orders and guidelines for the disposition of remains. Explaining to loved ones about who you have chosen to handle these matters and why may help head off harsh words or ill feelings later on.

Learn more about end of life and estate planning in the AMG publication [End of Life Planning: Are You Good to Go?](#)



Social Security and Estate Planning

Divorcing and perhaps remarrying may raise concerns that a former spouse's needs could diminish the Social Security benefits available to you and your current spouse. That is not the case. The benefits you or your family may be eligible to receive are not affected by the benefits a former spouse may receive based on your work record.

Which Benefit Can a Spouse Receive?

A spouse reaching their Full Retirement Age for Social Security may be entitled to a [spousal benefit](#) of up to 50% of the worker's [Primary Insurance Amount](#), which may not necessarily mean half the retirement benefit amount.

If the spouse is also eligible for a benefit on their own earnings record, they can receive the higher of the two amounts.

(See AMG's "Social Security and Retirement" publication for more details.)

Benefits for former spouse

Starting at age 62, a divorced spouse who has not remarried may be entitled to retirement benefits from the former spouse if:

- Both the divorced spouse and the former spouse are at least age 62.
- The marriage lasted for at least 10 years.
- The two have been divorced for at least two years. (The two-year waiting period does not apply if the divorced spouse was entitled to spousal retirement benefits prior to the divorce.)

If a former spouse remarried but their second spouse has passed, the former spouse generally can claim benefits either from the first spouse's record based on the 10-year marriage rule, or from the second spouse's record, if the marriage lasted at least nine months.



Benefits for your retirement

Perhaps the first step for a couple is agreeing on when to retire and begin to claim Social Security benefits. Your financial plan likely already includes milestones for when you will have accumulated adequate savings in retirement or investment accounts.

If there is an age difference between you and your spouse, another consideration is whether the retirement dates will be staggered, or will both retire at the same time? If the age difference is significant, the retirement planning will need to consider the younger spouse's full life span.

The Social Security Administration website includes a [calculator](#) to estimate how much you will receive based on when you elect to receive benefits. The longer you wait between ages 62 and 70, the higher the benefit can be. The maximum Social Security benefit, which generally is achievable only by higher-earning individuals applying for benefits at 70, is about \$54,000 per year for 2024.

Beneficiary Designations

Be certain that beneficiary designations on retirement accounts, life insurance policies, bank accounts, and other financial assets are up to date. Your designations generally will trump anything in your estate plan. For example, if

your up-to-date will specifies that you leave everything to your current spouse, but the beneficiary designation on a 401(k) account still lists a former spouse, the proceeds of the 401(k) likely will go to the former spouse.

In instances where you may wish to leave a former spouse as a beneficiary, it is important to discuss this with your current spouse to avoid surprises and rancor after you pass.

Consult with Professionals

In seeking to effectively navigate the potential hurdles and pitfalls that can come at the intersection of finances and marriage, there are many factors to think through. Consider consulting with an attorney, a tax professional, and financial advisor, among others, to help you understand the implications and options that may best fit your unique situation.

Partner With AMG

Setting yourself up for financial security during marriage requires making informed and potentially life-altering decisions that many may feel unprepared to handle on their own. Because knowledge is power, utilizing a prenup can facilitate crucial discussions and identify issues about managing wealth during your marriage.

How do you know whether you might need a prenup? Significant wealth, alimony and/or child support obligations from a previous relationship, or the expectation of coming into an inheritance are among the reasons you may benefit from looking at a prenup. A financial advisor able to understand your goals and evolve as you do can help facilitate your next steps.

AMG's comprehensive solutions seamlessly connect every aspect of our firm—wealth management, taxes, philanthropy, retirement planning, and more—to deliver toward your success.

If you would like to schedule a [free consultation](#) with AMG about financial security in every phase of your life, call 800.999.2190 or [email](#) with the best day and time to reach you.

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