



Legal Insurance

Planning a Marriage: Prenups, Laws and More



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Planning a wedding can be pretty exciting. But even more important than planning the wedding is planning the marriage — especially when it comes to legal and financial issues. This guide will explain some of those issues and give tips for things like managing money, prenuptial agreements, legal requirements, remarrying and more.

The decision to get married

Making a lifetime commitment to someone you care deeply about holds much promise and excitement. But it's also a legal contract. And while you're gaining rights and benefits, you're also taking on legal and financial responsibilities.

That's why it's good for you and your partner to consider these questions:

- ✓ Should we sign a prenuptial agreement?
- ✓ How will we manage our money? What will be combined, and what will be kept separate?
- ✓ Will we use the same or separate bank accounts and credit cards?
- ✓ What's our new budget?
- ✓ How will we pay bills?
- ✓ What debt do we each bring to the marriage?
- ✓ Where will we live - will one person move into the other's home or will we get a new space?
- ✓ Do we need to financially support children from a prior relationship?



Planning for the future

Money can be a big source of arguments in a marriage. Making sure you're on the same page when it comes to finances will help you avoid conflicts down the road.

After all, a conversation about your finances is a conversation about your future. So well before the wedding, have a sit-down, no-distractions-allowed chat about money. Consider these questions:

- ✓ Growing up, what were you taught about handling money and financial obligations - what spending and saving habits did you develop?
- ✓ Are you a spender or a saver?
- ✓ What financial goals do we want to work toward?
- ✓ Do we want to save to buy a house?
- ✓ What are our plans for having children?
- ✓ How will we save for retirement?
- ✓ What plans do we want to put in place for the future?



What you need to get legally married

What you'll need to get married varies by state. But generally, you and your future spouse need to be:

- ✓ At least the age of consent (age 18 in most states, although sometimes you may marry younger with parents' consent)
- ✓ Not too closely related
- ✓ Of reasonable mental capacity (you understand what you're doing and what consequences your actions may have)
- ✓ Not married to anyone else

Also note that a state requires a marriage license and marriage certificate.



Marriage license

This is the legal document that authorizes you to get married. Depending on the laws of your state, you may apply for a marriage certificate in the county or town where you intend to be married.

Generally, you'll pay a small fee. And the license is issued in a few days.

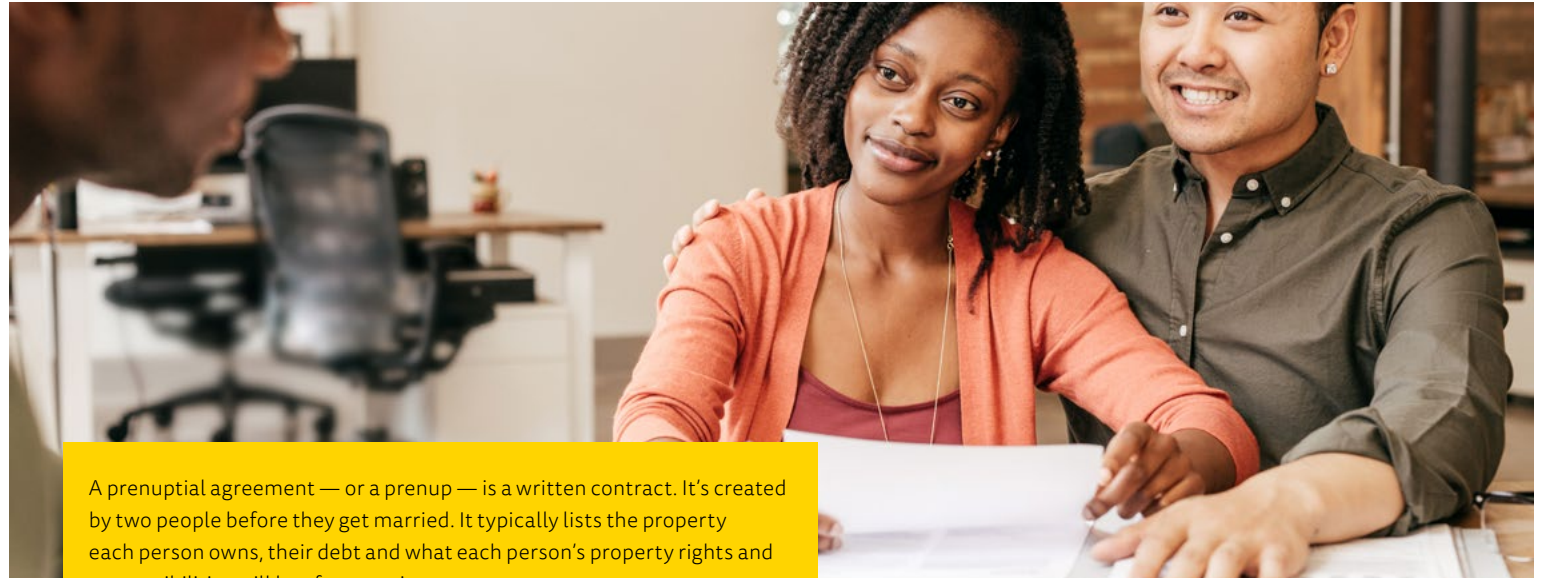
Some states, though, require a waiting period between getting the license and getting married. Most licenses also expire after a period of time, from 30 days to up to a year.



Marriage certificate

This is the document that proves you're married. Most states require both spouses, along with the person who officiated and one or two witnesses, to sign the marriage certificate. This is usually done just after the ceremony.

Prenuptial agreements



A prenuptial agreement — or a prenup — is a written contract. It's created by two people before they get married. It typically lists the property each person owns, their debt and what each person's property rights and responsibilities will be after marriage.

Why you may want a prenup

Prenuptial agreements can help to:

- Protect each person's separate property and debt
- Support an estate plan, especially if children from prior relationships are involved
- Define marital property vs. community property
- Reduce conflicts and save money in case of divorce
- Establish procedures and ground rules for future decisions

You can also use prenuptial agreements to address common issues like:

- Whether to file joint or separate income tax returns
- Who will pay the household bills (and how)
- Whether to have joint bank accounts and, if so, how to manage them
- How to manage purchases like buying a house or starting a business
- Whether to have joint or individual credit cards
- How to set aside money for savings
- How to put each other through college or professional school
- Whether a surviving spouse will be provided for in an estate plan or with life insurance coverage
- How to settle any future disagreements (for example, through a mediator or private arbitrator)



Creating a prenuptial agreement may seem contrary to the act of getting married. (“Why should we decide how to split things at divorce when we’re planning a lifetime commitment?”)

But having an open conversation about money and property can actually build your relationship. Even if you don’t sign a written agreement, being able to talk about finances can ensure you’re both on common ground.



Why you may not need a prenup

Maybe you don't need a prenuptial agreement right now. If not, you can always agree to do one later. This is known as a post-marital agreement.

Also, state laws may protect you — even without a prenuptial agreement. Depending on where you live, your state laws on how property is distributed at divorce may be exactly what you want. So you may not need the extra effort (and cost) of a prenuptial agreement.

What you can't do with a prenup

State laws determine what you can and can't do with a prenuptial agreement. But as a general rule, here are some things a prenup usually can't do:

- ✓ **Restrict child support, custody or visitation rights.** No state will allow agreements limiting or giving up future child support. The same holds true of agreements limiting future custody and visitation rights. The states consider the welfare of children to be a matter of public policy. So they don't enforce any private agreements that would impair a child's right to be supported or to have a relationship with a parent in the future.
- ✓ **Give up the right to alimony (in a few states).** A handful of states limit the ability to give up rights to alimony if you get divorced. Check with your state laws for what applies in your situation.
- ✓ **Make rules about nonfinancial matters.** For practical reasons, keep personal agreements — like who has responsibility for household chores or agreements about having and raising children — out of this agreement.

Prenups: What else to keep in mind

If you decide you want a prenuptial agreement, start by agreeing on the essential things that are important to both of you. Put these in a written document so that you're both clear — and so the attorneys can see clearly what you're trying to accomplish.

Then, you should *each* choose an attorney to help with the agreement. Both attorneys should have a lot of experience with prenups.

Here's why. The laws surrounding marriage and prenuptial agreements are complex and vary by state. Having attorneys who are experienced in these arrangements will help to make sure you get the best representation. And having separate attorneys ensures that you've created an agreement you each understand. That way, neither of you will feel that the other made all the decisions.

Questions to ask when remarrying

Unlike a first marriage, remarriage can be a bit trickier from a financial perspective. Here are a few questions you may want to ask before heading to the altar:

- ✓ **Is either person currently receiving alimony or Social Security from the previous marriage?** Often, alimony ends if the person remarries (and sometimes even if the person moves in with someone else). Social Security also becomes subject to change when remarrying.
- ✓ **How will remarrying affect college financial aid for your child or your spouse's child?** Qualifying calculations may include income of either parent's current spouse.
- ✓ **What is each person's credit and debt history?** While each person has an individual credit report, joint credit obligations show up on both credit reports. So even if your fiancée is fiscally responsible, his or her credit report may reflect an ex-spouse who overextended joint accounts. This isn't irreparable. But it may impact when and how you can buy a home or get a loan with your new partner.
- ✓ **What income and assets do each person bring to the marriage?** If there's a big gap, is each person comfortable with what the other contributes?
- ✓ **What is each person's individual attitude toward money based on upbringing and life experience?** People generally pick up their financial habits when they're young.
- ✓ **How will you both handle paying bills and planning for the future?** Will accounts be combined or left separate? Many financial experts advise having both separate and shared banking accounts. This gives you both some independence, it keep financial matters related to children from a previous marriage separate and it hedges against potential downsides.
- ✓ **Will you create a prenuptial agreement?** Creating one clarifies who owns assets and debts if the marriage ends. And it ensures certain financial issues are discussed before the marriage begins.



Different kinds of unions

Marriage is one form of union. And it has the clearest interpretation of the legal rights and responsibilities that come with it.

But it isn't the only one. All recognized forms of union in the United States are created by state law (generally statutory and sometimes judicial). Here are other common forms of unions.

Civil marriage

What exactly is a civil marriage? It's a legal status that's created through a state-issued license. The license gives legal rights and obligations to each person. For the purposes of federal laws, civil unions are recognized by the federal government.

All states must recognize same-sex marriages and permit them to be contracted within the state. State law also defines how to get a civil marriage license and the process for performing the civil marriage ceremony.

When a state's laws mention "married persons," "spouses" or "surviving spouses," they typically include people involved in civil marriages. Same sex couples can marry in all states and can participate in any marriage equivalents (i.e., civil unions or domestic partnerships) that are available to heterosexual couples¹.

Cohabitation

Cohabitation is when two people live together as a couple under the same roof — but they don't have any formal or informal sanction for their relationship. No state recognizes simply living together as a legally recognized family. But it may be considered in common law marriages.

Civil union

A civil union is a legal mechanism that's sanctioned by the civil authorities. It was originally intended to grant same-gender couples legal status somewhat similar to civil marriage. There has to be a statute in the state that authorizes civil unions and specifies who's eligible to enter into a civil union, how the unions are created and the extent of the legal impact.



Common law marriage

A common law marriage is a legally recognized marriage between two people who haven't purchased a marriage license or had their marriage solemnized by a ceremony.

Most states don't permit the formation of common law marriages. But a handful of states do. A few states recognize them but only for limited purposes².

Domestic partnership

In a domestic partnership, two people live together and mutually support each other as spouses but aren't legally joined in a civil marriage or a civil union.

For a domestic partnership to be "officially" recognized, there has to be a state statute. That statute authorizes domestic partnerships, specifies who's eligible to register as domestic partners and specifies the legal effects of the relationship.

State laws vary. So check your state's laws to see how it handles the legal status, rights and benefits of specific family relationships. Online access for state statutes can be found at your state legislature's website.

Changing your name

Wondering if you should change your name when you get married? It's completely up to you.

If you decide to change your name, use the new name consistently. And be sure to change your name on all of your identification, accounts and important documents. To change some of your identification papers – your Social Security card and driver's license, for example – you'll need a certified copy of your marriage certificate. (You should receive that a few weeks after the marriage ceremony.)



Other marriage questions to consider

After the wedding, you may also want to consider these decisions:

- ✓ Will one of you add the other to your health insurance policy?
- ✓ Do you need to update beneficiaries on bank accounts, retirement plans, securities and life insurance policies?
- ✓ Do you need to create (or update) your estate planning documents such as your will, trusts, powers of attorney and living wills?
- ✓ Will you adopt your spouse's children?



Get legal advice when you need it



As you and your loved one go through life together, you'll encounter some ups and downs. In both cases, the advice of an attorney may make things a lot easier — in the short run and the long run.

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¹ Legal Information Institute, Cornell Law School, July 2021, https://www.law.cornell.edu/wex/same-sex_marriage

² Common Law Marriage by State, National Conference of State Legislatures, March 11, 2020, <http://www.ncsl.org/research/human-services/common-law-marriage.aspx>