A Prenuptial Agreement will clarify your property rights and financial responsibilities

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Q: My fiancé and I plan to marry. This is the second marriage for each of us, and we both have children from previous marriages. I have heard something about a "Pre-Nuptial Agreement" for couples in our situation. Does that sound like a good idea?

A: Probably. In its simplest form, a Prenuptial Agreement ("Prenup") is a written contract which clarifies your property rights and financial responsibilities to one another.

It identifies ownership of assets, states whether they are to remain the separate property of the

owner-spouse or changed into the couple’s community property, may describe how household expenses are to be paid during the marriage, would typically provide how assets are to be later divided in the event of divorce, and whether financial support would be payable from one to the other in that event.

For seniors, the agreement should also allocate responsibility for the cost of long-term care expense in the event of illness, as well as provide a financial plan for the ongoing needs of the survivor.

Further, by clarifying the separate ownership of selected assets, the agreement can actually facilitate each spouse’s desire to leave something to his or her own children by will or trust.

To make sure that the agreement is legally enforceable, both should have their own attorneys assist in the process and the terms of the agreement should be fair to both parties. If the agreement addresses spousal support in the event of divorce, each party must be represented by separate counsel in order for that provision to be enforceable.

 Spouses who have already married can also prepare an agreement to address these issues. That document would then be called a Postnuptial Agreement (“Postnup”).

But a Prenup or Postnup is only one step in the process of defining rights and obligations to one another: that agreement should be prepared in conjunction with updating each person’s will, trust, power of attorney, and health care directive, as well as beneficiary designations on financial accounts, insurance policies, annuities and retirement plans. Once you both fully complete this process, you may find that each of you feels more comfortable facing the future together.

Based upon your own comfort level, you and your fiancé may choose to share these documents with your children, but whether you choose to do so or not, at least you will be able to assure them that you and your new partner have planned for your own future as well as theirs.

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