

# Prenuptial Agreements as an Estate Planning Tool

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Let's say you are getting married and have children from a previous marriage. Your spouse-to-be also has children and is financially secure. You may want to change your will to leave the bulk of your estate to your children and perhaps a small amount to your new spouse.

However, the change in your will may not completely disinherit your spouse because of most states' laws.

A properly drafted prenuptial agreement, along with a change in your will, may help to fulfill your wishes.

Without proper planning, it is possible that say, a family home or family business, could pass to your new spouse and eventually to his or her children, rather than your own.

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In some cases, agreements segregate property owned before the marriage from property acquired during the marriage.

Here are some factors necessary to ensure that a prenuptial agreement is valid and enforceable:

1. It must be in writing and signed by both parties.
2. There should be no pressure. The prenuptial agreement should be given to the other party well in advance of the wedding.
3. There must be full disclosure. A pre-nup should generally list both parties' assets, as of the date of the marriage. If one party doesn't make an adequate disclosure, the agreement is likely to be disregarded.
4. Both parties should be represented by their own attorneys.

**What if you are already re-married and didn't sign a prenuptial agreement? You may be able to sign a *post-nuptial* agreement to accomplish the same goals. Consult with your attorney.**

So in the case of a second or third marriage, you can ensure your children will receive the assets you desire by having a valid prenuptial agreement, as well as having a properly drafted will — and keeping the will current as you acquire assets during the marriage. You may also want to set up a trust.

**Important:** Just because you have a prenuptial agreement doesn't mean you can't name your spouse in your will. You may want to leave your spouse some money or assets to ensure his or her future security.

Consult with your attorney and your estate planning advisor. The requirements of prenuptial agreements and estate planning are complex and vary from state to state.

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