Smart financial planning for the blended family

Why are prenuptial agreements and wills so critical? One reason is that the existence of the marriage will make an existing will null and void in most parts of Canada. The only way that marriage will not invalidate a will is if the two parties drew up a will in anticipation of the nuptials and the will specifically mentions the upcoming marriage of the two named parties. The more children and assets involved in any new marriage, the more complicated the legal considerations. The goal in such a situation is to have the prenup and will as separate documents that “talk to one other.” In other words, the two documents are written in consideration of each other and do not cause confusion or contradiction. Common practice is to retain a family lawyer to create the prenup and an estate lawyer to draw up the will. However, an individual lawyer with the relevant qualifications, two lawyers from the same firm or even two lawyers from different firms (who are acting with the knowledge of the other) can draw up the prenuptial agreement in place and the will transfers all assets to his spouse (a common strategy used to pay less in taxes and probate fees). A problem arises, however, should the sole die and her will covers only her children from the first marriage and perhaps those from the second marriage. It wasn’t the intention of the husband to cut his children from the first marriage out of the estate, but that is exactly what would happen in this scenario.

A prenuptial agreement may shut off an asterisk subject, but ultimately it is up to the lawyers as to what they start off from previous unions.

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**Things can get complicated when you say I do more than once**

Separation, divorce and remarriage are so common today that they are hardly remarked upon. From a financial and estate planning standpoint, however, this is not the case. Although marriage is typically considered to be a fresh start, the reality is that second unions bring with them assorted assets, liabilities and, quite often, responsibilities. Protecting your rights and estate can be complicated when it comes to blended families—yours and your spouse’s—and the more wealth you have, generally the more you have to worry about.

Prenuptial agreements (also known as premarital agreements) typically contemplate marriage for a second time and should also seek legal advice and draw up a prenuptial agreement to ensure everything is treated fairly in the future.

What should go into a prenup? First of all, both parties should seek independent legal advice and if children are involved, the court may consider a prenup. In addition to financial considerations, other issues such as the deceased’s wishes should be addressed in a will, which allows the parties to control assets “beyond the grave” and ensure the final distribution of assets to surviving children, grandchildren or other family members from the first marriage.

These unfortunate situations can be traumatic, but they can be sidestepped neatly with the creation of a prenuptial agreement. A prenuptial agreement is a written contract, which is negotiated with the assistance of a lawyer, that specifies how assets will be divided in the event of a divorce or separation. It can also include provisions for spousal support, child custody, and visitation rights. In many cases, a prenuptial agreement can be drafted to ensure that each party is clear on what will happen to their assets in the event of a divorce or separation. It is important to note that a prenuptial agreement is only enforceable if it is fair and reasonable to both parties, and that it does not violate any laws or regulations. In conclusion, a prenuptial agreement is a valuable tool for protecting the financial interests of both parties in a marriage. By making sure that everyone’s wishes are addressed, it can help to minimize conflict and ensure a smoother divorce process.