Legal Matters®

Family Law
summer 2020

Do you need a prenup for your 'grey' marriage?

Last year, Amazon.com founder Jeff Bezos and his wife MacKenzie ended their 25-year marriage, joining hundreds of thousands of other couples who've obtained a "grey divorce" after age 50.

Even after MacKenzie walked away with shares of Amazon.com valued at $38 billion, Jeff remains the world's wealthiest person with his $115 billion stake in the company. But if Jeff remarries, he'll very likely get a prenuptial agreement that lays out in advance exactly what the new spouse would be entitled to should that marriage break up too. If you are in your 50s or older and you're getting married, you should also consider a prenup because divorce can be economically devastating, particularly if you don't have the resources of a Jeff Bezos.

A prenup underscores that a late-in-life marriage is a serious commitment.

Here are some things to think about when considering a "grey" prenup.

First, ignore any negative stigma associated with prenuptial agreements. Many people mistakenly believe a prenup means you either don't trust your new spouse or you're entering into the marriage with an eye toward divorce. The reality is that a prenup underscores that a late-in-life marriage is a serious commitment. People likely have significantly more assets to protect than they did when they were younger and they are more likely to have other obligations, like child support or alimony, that would give them even more reason to protect those assets. Additionally, they're likely to have children and grandchildren to whom they will want to leave their assets.

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A prenup can be a useful financial planning vehicle as you move into a new marriage. For one thing, you can use a prenuptial agreement to address the financial well-being of both you and your soon-to-be spouse in the event of a divorce, while ensuring each of you has assets to leave to your respective children. This can do a

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lot to head off potential tensions associated with blended families. Without such an agreement, an estate plan can be altered at any time, creating the potential for additional conflict and strife should the marriage end.

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A prenup is potentially a good way to plan for your retirement. If you're already past 50 when you marry, there's a good chance your retirement assets will be supporting you sooner rather than later. If you both have retirement assets, you can decide in your prenup which spouse's assets will be used for living expenses and whose assets you might delay receiving for tax purposes. Meanwhile, you can also build into the prenup arrangements how retirement accounts will be divided between a surviving spouse and the deceased spouse's children to ensure both are taken care of.

These are just a few things to consider. If you do decide to get a prenup for your later-in-life marriage, it's important to have a family lawyer who is experienced in drafting these types of agreements represent you. It's also important that you each have your own separate attorney to make sure both your interests are being represented adequately. This should lead to a fairer agreement and one that's less vulnerable to challenge should it ever need to be enforced. Talk to a family law attorney where you live to learn more.

Despite divorce agreement, ex-wife gets insurance benefits

If you are getting a divorce and you want someone other than your soon-to-be former spouse to receive benefits under your life insurance policies and retirement plans, a recent case from a federal appeals court shows how important it is to review these documents and update your beneficiaries accordingly. The case also shows how important it is to be represented by a knowledgeable attorney capable of picking up on ambiguities in divorce documentation.

In this case, West Virginia man Frank Baker Jr. listed his wife Patricia as the designated beneficiary on his life insurance policy. When the couple got divorced, they used a property settlement agreement (PSA) to determine how everything they owned would be split up. One paragraph of the agreement stated that Patricia was agreeing to relinquish "any and all right to any life insurance policies" on Frank's life. That paragraph also stated, however, that Frank could "change the beneficiary" on any such policy.

Frank never followed up and when he died several years later Patricia was still listed as the designated beneficiary on a $250,000 policy, with Frank's daughter Jessica listed as the contingent beneficiary (in other words, the person who receives the benefits if the designated beneficiary can't or won't). As beneficiary, Patricia demanded payment. But Jessica made a competing claim, arguing that Patricia relinquished any claim to the benefits in the PSA.

The case ended up in federal court, where the judge ruled that Jessica was entitled to the benefits.

Patricia appealed the decision and the appeals court found that the lower court judge had made a mistake.

According to the court, the PSA was ambiguous and could be interpreted to support Jessica's argument that Patricia relinquished any right to the policy *or* Patricia's argument that while she relinquished her ownership rights in the policy, Frank could keep her as beneficiary if he wanted to and his failure to change her status indicated his desire to do so. Because the PSA was unclear, the lower court would have to take another look.

It's not clear at this point who will end up with the life insurance proceeds, but both parties could have been saved a lot of trouble if the PSA was drafted more clearly and if Frank had changed the beneficiary designation on his policy. If you're going through a similar process, speak to a divorce attorney who can go through all your assets, plans and policies to make sure your beneficiary designations reflect your wishes.

Child support may terminate only with judicial emancipation

If you pay child support for a teenaged son or daughter who leaves the other parent's home to live elsewhere, do you still have to keep paying? Though it may vary from state to state, a recent North Carolina case indicates the answer is "yes."

The parents in that case, Shannon Morris and Dean Powell, married in 1994 and had two children before divorcing 2013. The judge granted joint custody of their son "Richard," with Shannon receiving primary custody and Dean being ordered to pay $1,000 a month in child support.

When Richard was 17, he moved out of his mother's house and in with his girlfriend. Because Richard wasn't living with his mother anymore, Dean stopped making support payments the next month. Shannon took Dean to family court over his non-payment and Dean moved to terminate his obligation. The judge granted Dean's motion, finding that Richard had essentially "emancipated" himself (in other words, freed himself from his parents' control and freed them from any and all responsibility toward him).

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Shannon appealed and the North Carolina Court of Appeals reversed the trial judge's decision, finding that North Carolina law — which states that child support payments "shall terminate" when a child reaches the age of 18 or is "otherwise emancipated" — does not recognize "de facto" emancipation. For Richard to become emancipated, he would have had to go to court himself to get a decree from a judge. So while the court said Dean shouldn't be held in contempt as Shannon wanted, it also said he still owed the payments.

Other states may view things differently. If you're in this situation, talk to an attorney to find out the law where you live.

Adultery allegations may form basis for alimony reduction

A recent Virginia case suggests that engaging in extramarital affairs can come back to hurt you later on, even if your spouse did not raise your alleged adultery as an issue in the initial filings. That's because in some states the divorce itself and spousal support may be separate issues with different considerations.

The case in question involved Julia Karabaic-Chaney and Jacob Chaney. Julia filed a complaint for divorce, seeking equitable distribution of their property (in other words, a court dividing their marital assets and liabilities in a way deemed fair under state law), alimony, child support and attorney fees. Jacob did not mention Julia's alleged adultery in his answer to her complaint.

After hearing testimony from both spouses, the judge granted Julia a divorce, divided the property, ordered Jacob to pay child support and awarded Julia $45,000 in alimony to be paid in installments over the next five years. The judge also gave Julia the right to go to court to seek further spousal support once the five years were up.

In fighting the alimony award, Jacob sought to introduce evidence of Julia's alleged unfaithfulness,

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but the judge said it was inadmissible because he didn't bring it up in his pleadings.

Jacob appealed and the Virginia Court of Appeals reversed the decision, pointing out that state law on spousal support says a judge can consider a variety of factors, including adultery. This language "commands" a court to consider adultery when awarding alimony, even if the person introducing the evidence didn't raise adultery as grounds for divorce or as a defense.

This is a Virginia case and not all states will handle the issue the same way. So consult with a family law attorney in your state if you're facing a similar situation.

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Right to 'maintain lifestyle' not absolute after divorce


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It's a common notion that a divorcing spouse has an unshakeable right to support which will maintain the lifestyle he or she became accustomed to during marriage. But this is not always true.

A recent Massachusetts case makes this clear in the alimony context. There, a divorcing wife received custody of the children, child support and alimony. Four years later, she caused a fatal accident while driving drunk and went to prison for eight years. During her incarceration, her ex-husband was the children's sole support. Meanwhile, he continued to make reduced alimony payments pursuant to a modification judgment issued around the time of the wife's arrest.

Once the wife was released, the husband, who was earning more than $200,000 a year, sought to have his alimony obligation terminated. In doing so, he pointed out that he had been paying his ex-wife, who was now making $15 an hour at a Home Depot but also had income from a trust fund and an inherited IRA, for longer than the durational limits under state law for a marriage of their length.

In response, the wife argued that justice demanded a deviation from durational limits because termination of alimony would leave her with a lifestyle significantly inferior to what she had enjoyed during the marriage.

The Massachusetts Appeals Court disagreed, emphasizing that a spouse needs to show more than just a diminished lifestyle to warrant deviation, particularly when he or she can provide for his or her own support.

Laws vary from state to state, however, so talk to a matrimonial lawyer in your state if you want to know more.