

## A Woman's Self-Defense Guide to Estate Planning

Your boyfriend wants you the two of you to open a joint checking account. Your fiancé wants you to sign a prenuptial agreement. Your husband wants to give all his wealth to charity. Your ex-husband wants to keep his retirement funds all to himself. Here's a quick guide to your estate planning rights.

### Assess the Risks

First, remember that you incur one of the greatest risks, whether married or cohabitating, when you co-mingled assets with someone. One of the most common ways of doing so is with "joint tenancy," in which you and a joint tenant both own 100 percent of an asset. With joint tenancy, you run the risk of losing all the asset to the other person's creditors. Should you die first, the asset will pass on automatically to the other owner, disinheriting your children or other loved ones. Co-mingling assets has other risks, as well. The best advice: proceed with caution and seek out professional guidance before you make joint purchases or share ownership with a nonspouse.

### Know Your Rights

The law protects the rights of spouses in several ways. For example, Oklahoma grants spouses an automatic right to one-half of their spouses' estate, called your "elective share." So, no matter how mad you and your spouse might get at one another, neither of you can disinherit the other.

A spouse's rights to the other's retirement funds are also carefully protected by law. In most cases, you are the presumed beneficiary of your husband's retirement plan should he die before you. You are also vested in a portion of your husband's retirement funds if you divorce. To protect your rights, your divorce agreement should include a Qualified Domestic Relations Order (QDRO), assigning you a portion of your husband's retirement distributions based on the amount of contributions your husband made to his plan during your marriage.

There is an exemption to the rule, however. You can sign a spousal waiver during marriage. Sometimes doing so is in the best interest of all, but again, seek professional counsel beforehand.

### The Growing Use of Prenuptial Agreements

The use of prenuptials is growing, and no longer exclusively among the Donald Trumps of the world. With the increasing number of second marriages among older individuals with substantial assets of their own and children they want financially protected, prenuptial agreements are providing peace of mind and greater control in situations that might once have provoked legal battles.

Be sure to discuss the appropriateness of one with your legal advisor if you have significant wealth or children from a prior relationship, or if your fiancé wants a prenu. Your advisor will help ensure that your rights are protected. And remember that one key to the validity of a prenuptial agreement is full-disclosure of all assets, including an accurate representation of their worth. If you or your fiancé withhold critical information about asset holdings, the agreement may not be enforceable. Also critical is that you and your fiancé each have independent counsel. Without separate counsel for both parties -- or if

either party lacks any counsel at all -- a prenuptial agreement probably won't hold up in court.

#### Never Assume

The best defense is a good offense. With estate planning, that means never taking for granted that others will act as you want. The only way to be sure of an outcome is to make plans that guarantee it.

For instance, consider that at some point in your life you may become incapacitated. (The odds are high: at least 40 percent will spend at least 6 months in a full-time care facility.) You'll need a personal representative to take charge of your personal and financial affairs. If you don't appoint one for yourself in advance, the probate court will do so for you. It's a mistake to assume the courts will automatically appoint the same person you would have chosen for yourself. They don't. In fact, they increasingly appoint paid professionals who will bill your estate for their services.

The solution is an advanced directive, a two-part document that lets you spell out your wishes for medical care (like a living will) while empowering someone to make decisions on your behalf (a health-care power of attorney). To grant you the greatest degree of protection, you should also make a nomination of guardian, designating the person you want managing your affairs, as well as a durable power of attorney for property, which gives your guardian the right to make financial and legal decisions on your behalf during your disability.

Similarly, never assume that your loved ones or the probate courts will make the best decisions about your estate after you're gone. If you have minor children, your top priority is the appointment of their guardian. Failing to do so will not only place terrible stress on your children and may create family discord as your survivors wage legal war against one another for control over your children.

Also, make provisions for how you want your wealth distributed. Don't assume that your bereaved family and the court will do the right thing. For instance, say your husband is ill and in need of full-time care, while your well-to-do son needs none of your wealth. Fail to create an estate plan, and the state of Oklahoma will distribute half of your estate to your husband, who needs every cent, and half to your son, who doesn't need your money at all.

The stakes increase ten-fold if you have minor children. If you fail to create an estate plan, the court will appoint a guardian to manage your children's money. Each year, the guardian will have to submit a full financial accounting to the court and may even have to post a bond, sometimes several thousands dollars' worth. While both measures are intended to protect your children, they add to the hassle and expense of serving as guardian. And it may even be required if the guardian is your husband and the children are his own!

These requirements may also be enforced if your estate plan calls for a testamentary trust -- a trust created on behalf of your loved ones when you die -- then regular oversight of your trustee and the posting of a bond may be necessary. There are trust alternatives that give you maximum control, without the costly legal burden of court interference and bonding.