

# MARRIAGE & ASSET PROTECTION

By Audrey B. Schneiderman, Esq.



**So you have fallen in love for** the second time and have decided to “tie the knot”. Before you take that trip down the aisle, there are certain issues that should be considered, for example: the division of assets, providing for children of a former marriage, support for your former spouse, and support for your soon-to-be new spouse.

**Question:** I have accumulated assets through the years. How can I protect these assets from my new spouse?

There is more than one way to protect previously acquired assets. If you segregate your assets by leaving them in your own name, they shall remain your sole and separate property. However, this is not as simple as it may appear. To do this properly, one can never commingle these assets. Another way, is prior to the marriage, you can enter into a Prenuptial Agreement defining your separate assets. Additionally, a Prenuptial

Agreement can define future earnings, and assets ensuring that your wealth stays only with whom you so designate.

**Question:** I have a Prenuptial Agreement. Although, my husband has far greater assets than I do, the agreement provides for each party to be responsible for his/her own attorney’s fees. How can I get my Husband to pay for attorneys’ fees?

Florida law dictates that one cannot contract away attorney’s fees. Attorney’s fees in Florida are based on a 2 prong test: (a) one party’s need and (b) the other party’s ability to pay. In fact, even when a valid agreement signed by both parties dictates that each party pays his/her own attorney’s fees, Florida law, generally, will override this provision.

**Question:** I have been married for fifteen (15) years. I have two children from a previous marriage. In the event of my death, I wish to provide for these children. However, I want my spouse to be able to continue with the lifestyle we shared during our marriage.

Very often one party wishes to provide for their offspring in the event of their death while still providing funds for their present spouse. Again, there are various options available to address this issue.

If there are enough assets, either real estate or liquid, a party can provide for the spouse’s benefit upon death as well as other heirs in a Last Will & Testament. Additionally, either Husband or Wife can set up a Trust declaring that upon death, the spouse will receive income from the Trust

assets thereby leaving remainder for that spouse’ children.

One issue, however, with either solution is that the decedent’s spouse has the right to elect to take the “spousal elective share” which is one-third of the estate. That one-third may diminish the amounts to be received by the children.

This may be avoided by the parties executing a “waiver of elective share”. This is usually done in a written agreement prior to the marriage, and may be included as part of a Prenuptial Agreement.

In the event that the parties have not entered into a Prenuptial Agreement prior to the marriage, all is not lost. Either spouse can still protect their children’s share. Married couples can enter into a Postnuptial Agreement.

A Postnuptial Agreement is very similar to a prenuptial agreement in that it defines each party’s assets, rights, and responsibilities. The Postnuptial Agreement can designate what happens upon divorce and/or death. This agreement can also provide the “waiver of the elective share” as well. However, the Postnuptial Agreement is done during the marriage, rather than before. **stb**

—Audrey B. Schneiderman has been practicing law in Palm Beach County for 15 years. She is a partner in the law firm of Feldman & Schneiderman, P.L., with emphasis on family law. She is a graduate of the University of Wisconsin and Rutgers School of Law. Reach her at 561-392-4400 or at [aschneiderman@feldmanlawoffice.com](mailto:aschneiderman@feldmanlawoffice.com).



AUDREY B. SCHNEIDERMAN, ESQ.