



Home > Our Resources > The Whitnell Way > How To Talk To Your Children About Premarital Agreements

How To Talk To Your Children About Premarital Agreements

Preserve Your Relationships And Family Wealth

By David Yavitz, Attorney and Guest Columnist

Scientists tell us that the human brain does not fully form until around age 27. When I look back at some of the decisions I made in my youth, I know they are right. How many times have I said to myself: “what was I thinking?”

But like most young people, I believed I was fully capable of making entirely rational decisions. I would try to be respectful and listen to the advice and counsel of older and wiser people, but ultimately, I wanted what I wanted.

I see this dynamic play out every day in the families I am privileged to serve through my law practice. I help affluent families protect the wealth they’ve worked so hard to accumulate through premarital agreements. But often, these are not easy conversations to have because the older and wiser parents have a very different perspective on love and marriage than their young adult children. This can lead to conflict that puts the parent-child relationship at-risk.

If you want to institute premarital agreements to protect your wealth, but you are concerned about how this will impact your relationship with your child, here are some ideas to help you have productive conversations that achieve your goals.

The adult child’s perspective

I believe it is valuable to begin this dialogue by reflecting on where your young adult child is on their journey in life. An aura of respect and a conversational tone help maintain openness to this topic. And remember, it wasn’t that long ago that you were likely of a similar mind-set.

Many young adults get engaged right out of college. Often they have been dating for some time or living with the person they now intend to marry. They have stars in their eyes, a flutter in their heart and a feeling that they now know who they want to spend the rest of their lives with. More often than not, they are confident in love. They believe it will last. They trust their betrothed.

Usually these young adults see themselves as independent. While their parents were paying their education and living expenses while in college, they now are starting to earn an income and stand on their two feet.

Children of affluent parents often want to strike out on their own and forge their path. They don’t like to be under the shadow or control of their successful parents. While they appreciate and would secretly admit that they need their parent’s financial support, they often see themselves as ready to face the world and make their own decisions.

This is why they might resent a parent telling them how to manage their love-life. How you talk about this topic could cast you in the light of being controlling or being supportive and protective.

The affluent parent’s perspective

Affluent parents of adult children are usually wise in the ways of the world. They have learned how to balance love, money, work and family commitments. Typically they have come by this wisdom through the school of hard knocks. This is a school that parents hope their children have not yet, and will never in the future, attend.

Affluent parents are realistic and know that about half of all first-time marriages end in divorce. Parents recognize the deep emotional connections that marriages produce, and they also see marriage as an economic partnership. They would never enter a business partnership without a written agreement and see the wisdom of such an agreement for a marriage.

Affluent parents have seen relationships end badly and know that the two people who marry are not the same two people who divorce.

Affluent parents have usually worked very hard and sacrificed a great deal to achieve their wealth. Many have lived within

OUR RESOURCES

NEWSLETTER

CASE STUDIES

WEBINARS

ARTICLES

REGISTER FOR OUR NEWSLETTER

First Name:*

Last Name:*

Email:*

Dbyavitz@comcast.net

SUBMIT

MIA ERICKSON - view full bio



“I’m really passionate about building an integrated plan for my clients. Taxes, retirement, investment, estate planning and so much more. I care about getting the details right.”

their means, saved and invested. They know how hard it is to accumulate wealth. They have often taken risk in business and had to learn to cope with tremendous pressures under difficult circumstances.

But the reason they've done all of this is to put themselves in a position to care for the ones they love. The day their children were born was the best day of their lives. While working long hours, they would look at the pictures of their children on their desk and know that it was all worth it.

This is why it is unthinkable that the wealth they've worked so hard to accumulate could end up going to someone else – someone their child used to love. This makes it very difficult to discuss this topic with their child without sounding harsh, demanding or hard-lined.

The legal perspective

Here are a few things to bear in mind from a legal perspective regarding this topic:

- Illinois law (and most other states that adopted marital or community property laws) considers "Marital Property" to be all property acquired during a marriage, irrespective of how titled, and all income earned during the marriage, subject to division upon divorce.
- Although property owned by a child before the marriage or gifted or inherited during the marriage is considered non-marital (and therefore not subject to division in a divorce) it is extremely common for non-marital property to become co-mingled or transmuted.
- A Premarital Agreement must not be unconscionable when it is executed. It must be in writing and signed by both parties as a voluntary act, free of coercion or duress.
- Premarital Agreements can establish parameters concerning assets and income both during the marriage and in the event of a divorce or death.
- A Premarital Agreement can define what will be considered "Marital Property" and how it is divided upon divorce. It can also determine whether or not there will be maintenance, formerly known as alimony, and if so, how much and for how long.
- A Premarital Agreement can also define "non-marital" property and provide that it be assigned to the owner on divorce. A Premarital Agreement can determine how property is handled if one spouse dies during the marriage.
- Premarital Agreements cannot regulate child custody, support or visitation, since those matters require Court approval.

Absent a Premarital Agreement your child is exposing everything owned, including the wealth you have or will pass to them, to be divided by total stranger – a Judge.

Tips for a successful conversation

The first thing to bear in mind is that these conversations are almost never easy and they take time. So I recommend that you think of this as a marathon and not a sprint. Be prepared to have multiple sit-downs with your child.

Second, I believe these conversations are the most fruitful when they are guided by a professional counselor who has been down this path many times. An attorney who is also a premarital law expert can be a real asset to an affluent family making these decisions. Why do I say this?

- A Premarital Agreement requires a full disclosure of assets and income by both parties. Many adult children are not fully aware of their parents' financial situation, nor are their fiancés. The moment of disclosure can be very revealing of a person's motives. An experienced attorney can recognize tell-tale signs of ulterior motives and alert the family.
- A Premarital Agreement should never be a surprise. In fact, agreements that are first shown to the bride at the church just before the wedding have been held as invalid by reason of duress or coercion. An attorney can document the due diligence process to ensure the premarital agreement stands up in court.

Third, I believe adult children are most receptive to their parent's wishes when they are approached with the language of love. I often coach parents to say something like this.

"The reason we want you to get a premarital agreement is because we love you so much. We've worked hard all of these years to ensure that you don't have to worry about things. While we certainly want your marriage to be life-long, we feel very strongly that the wealth we pass on to you must last your entire life."

Fourth, when all else fails, you can be the hammer. I have seen situations where parents demand that their children get premarital agreements. This gives the child the out to go to their fiancé and say – my parents won't let us get married without a premarital agreement.

Other reasons to have these agreements

The greatest advantage of a premarital agreement is that it allows a couple to have dignity in the end if a divorce occurs. Couples should not have to fight about assets or maintenance at a time when they are going through a traumatic break-up.

A Premarital Agreement can save both time and money, including attorneys' fees and costs associated with divorce. What otherwise may have been a contested divorce can instead be resolved with an amicable dissolution. This truly is a great gift from a parent to a child.

About the author

David B. Yavitz is the senior partner in the Chicago matrimonial law firm of Yavitz & Levey, LLP. He received his J.D. with honors from the University of Illinois Law School in 1969 and was elected to the Honorary Order of the Coif.

Mr. Yavitz has been selected by a distinguished panel of attorneys as one of the Leading Lawyers in Illinois for Family Law, a group comprised of the top 5% of Illinois family law attorneys. He has also been selected to Illinois Super Lawyers for Family Law.

As Chairman of the Illinois State Bar Association Family Law Section, he represented the organized bar in its lobbying which was instrumental in the successful passage of the Illinois Spousal Health Insurance Rights Act of 1985, the forerunner of the Federal Cobra law which allows the continuation of health insurance benefits to a divorced spouse of a covered employee.

He is the author of the chapter on Premarital Agreement for the soon to be published LexusNexus Practice Guide: Illinois Family Law.

You can learn more about David by visiting his website:
<http://www.yldivorce.com/Attorneys/David-B-Yavitz.shtml>

The information contained in this article is provided for informational purposes only. No illustration or content in it should be construed as a substitute for informed professional tax, legal, and or/financial advice.

WHO WE SERVE

Business Owners
Executives
Wealthy Families

WHAT WE DO

Wealth Management
Family Office Services

OUR SERVICES

Financial Planning
Investment Management
Family Office Services
Retirement Planning
More...

OUR RESOURCES

Newsletter
Case Studies
Webinars
Articles

OUR TEAM

Bill Thonn
Wayne Janus
Mia Erickson
Brian Henderson
More...