

Legal Issues for Newlyweds: Wedding Planning Goes Beyond the Dress and the Cake

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If you haven't noticed yet, spring is finally here! Flowers are blooming, days are getting longer, and the weather is starting to warm up. With the beginning of spring comes the beginning of wedding season. Planning a wedding involves a lot of decisions, from picking the perfect dress to planning the menu. Beyond the wedding, though, newlyweds also face a host of important legal decisions that will impact their marriages and the rest of their lives.

First, couples should consider whether they want to execute a pre-marital or post-marital agreement. Commonly called a "pre-nup," this is a binding contract between husband and wife in which they agree how their assets will be divided in the event of death or divorce. Typically the prenup will state that the individual assets of each spouse will not be subject to equitable distribution in a divorce. It is also common for a prenup to state that the spouses will have no claim to share in the estate of the other upon death. A prenup can also include "free trader" provisions that allow each spouse to transfer his or her individually owned property without the consent of the other spouse. This can be advantageous in North Carolina, where both spouses are required to sign all deeds and deeds of trust on property, even if they have no ownership interest in the property whatsoever.

Second, if the couple purchased a home before marriage, they should consider retitling the property so it is owned tenants by the entirety rather than tenants in common. Tenants by the entirety is a particular type of joint ownership exclusive to married couples. Upon the death of one spouse, the property passes automatically to the other spouse. By contrast, if the property is held tenants in common, the half of the property owned by the deceased spouse will pass pursuant to the terms of the decedent's will or to his intestate heirs if there was no will. In addition, tenants by the entirety property is given special protection from creditors. With the exception of the IRS, creditors of one individual spouse cannot attach to property held tenants by the entirety (note, however, that a joint creditor of both can reach such property). An individual creditor can attach to the one-half interest of the debtor in property owned tenants in common. To retitle their property, the couple will simply execute a new deed to themselves which explicitly states the purpose of the conveyance is to create a tenancy by the entirety.

Third, newlyweds should create or update their estate plans. If a married person with no children dies without a will, the surviving spouse *and the surviving parents* will share in the deceased spouse's estate equally. In my experience, this is contrary to the wishes of many people, who typically want to provide mostly for their spouse upon death, if not solely. A last will and testament is the only way to ensure that this happens. In addition to creating a will, the couple should review and update the beneficiary designations of their life insurance policies and retirement plans. These types of assets pass solely by the beneficiary designation; they do not pass by the terms of the will. Therefore, the spouse must be specifically named beneficiary in order to inherit the asset.

Finally, the newlywed should make sure to have durable and health care powers of attorney in place so that another person (often the spouse) is able to make financial and medical decisions for him or her

should they become unable to do so for themselves. In North Carolina, a person does not have authority to make decisions for his or her spouse just by virtue of being married. Powers of attorney must be in place to appoint the spouse as decision-maker. Without those documents, a guardianship will be required, which is an often lengthy and costly court process.

If you're getting married this spring, or have just gotten engaged, allocate a bit of your wedding planning time to considering these important legal issues. Their impact will remain long after the flowers have wilted and the last piece of cake has been eaten,.

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