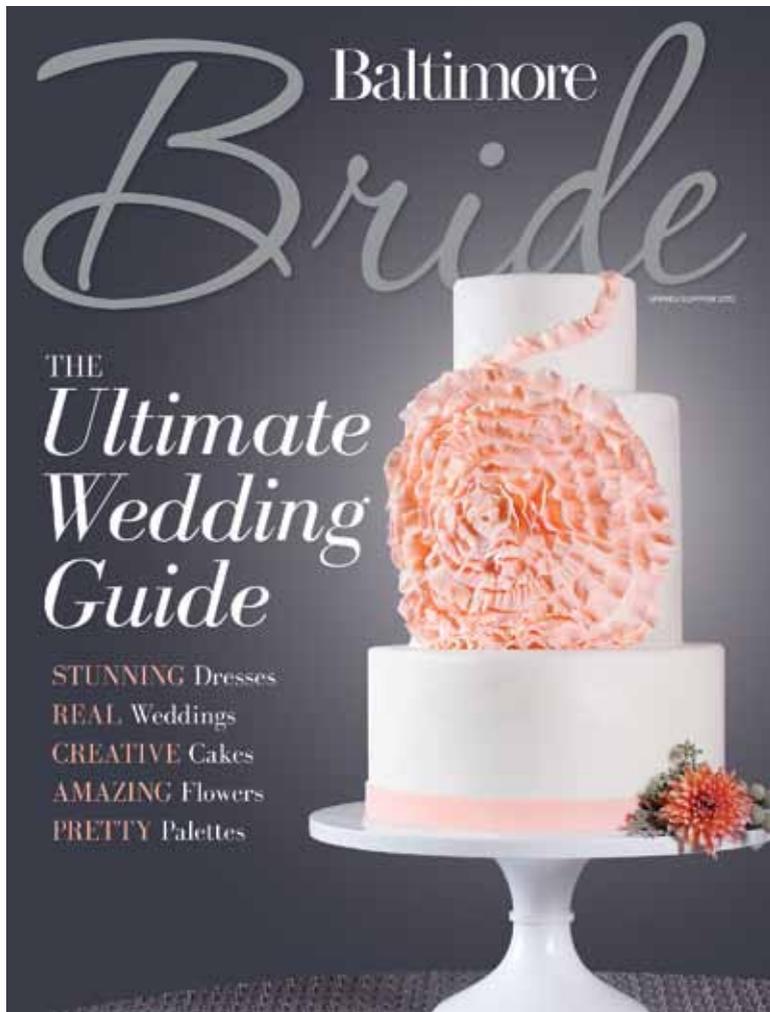


BY ALICE SHAPIN AND JOAN HENNESSY



## Love Meets the Law

There are lots of legal do's and don'ts to consider when tying the knot.

Meet Mr. and Mrs. Noah Hichenberg, he a Massachusetts native, she a Marylander. Two years ago, when they married, Noah took his wife Shira Hichenberg's name. Yes, you read that right, the *groom* took the *bride's* name.

"I knew this was important to Shira," says Noah. Aside from her mother, her brother, Shira herself, and now Noah, their family doesn't know of any other "Hichenbergs." And Shira wants to be able to carry on the name. "We weren't concerned that it was non-traditional," notes Noah, who uses his previous family name, Mencow, as a middle name.

Of course, that's not the norm: According to a study, *Constructing the Family in the 21st Century*, conducted by the Center for Survey Research at Indiana University,

90-95 percent of women in the U.S. change their names when they marry.

Back during the feminist movement, of course, changing or not changing your name was considered a political statement—one way or the other. But today, women have more freedom when it comes to the decision. With marriages more often a partnership, a bride can take her husband's name, keep her own, hyphenate names, use her maiden name as a middle name, and, while unusual, sometimes give her surname to the groom. But whatever a couple chooses to do, they should make it legal.

Family lawyer Dana McKee says that if you change your name, you need to record the change with the Social Security Administration, your state motor vehicle

agency, your bank, and your employer. You should also make sure your passport, voter registration, insurance policies, mutual funds, and securities reflect your new name.

### PRENUPTIAL AGREEMENTS

Prenuptial agreements are an emotional hot-button for some couples, but in what cases do they make sense?

"Prenups help to determine how assets will be divided in the case of both divorce or death, although divorce is usually the predominant motivation," says attorney Robert M. Reiner of Joseph, Reiner & Wiernicki, which specializes in estate planning, trust and estate administration. "But if you die *without* a prenup, your spouse

has certain rights that supersede a will, typically giving the survivor up to a half share of the estate. This can really throw a wrench into the best of estate plans.”

“I don’t see a lot of couples in their 20s, who don’t have many assets, getting one,” notes McKee. “Typically, it involves someone who comes into a marriage with a fair amount of assets that they want to protect. I have seen couples doing prenups who are getting married for the first time in their early 30s and couples in their 40s, 50s, and 60s who are remarrying.” They want to make it clear what assets would be joint and what would be excluded in case of divorce. Or, if there are children from a previous marriage, they want to make sure that what their children get from their estate will not be jeopardized. Another reason: If they have a business and there are partners, they’ll want to protect the business relationships and don’t want problems if there should be a divorce.

Couples might also consider a prenuptial agreement if one or the other has significant debt. For example, if the husband and wife pay off a debt that the husband brought into the marriage, the wife might want to be compensated in the event of a divorce.

But what if you find out about bad stuff *after* the wedding? The legal solution is called a “post nup,” says Carol G. Cooper, a family-law attorney with Adelberg, Rudow, Dorf & Henderl.

But prenups aren’t for every couple.

“Negotiating a prenup when you are planning a wedding sometimes makes that wedding not happen,” Cooper says. “If you don’t have significant assets you want to protect and you are starting on equal ground, I generally don’t see a reason.”

When drawing up a prenup, you should work with a lawyer. And each party should have their own lawyer.

“Ethically, one attorney can’t represent both parties,” McKee says. “One can have an attorney draw it up and the other person should have a lawyer review it and tweak it if necessary. The lawyer should tell them the strengths and weaknesses of the document.”

### RE-TITLING PROPERTY

Some assets can be protected without a prenup. If a person has significant equity in a home before marriage, he or she should weigh whether to re-title the property. Once property is re-titled, it could be considered marital property.

If someone has a house and no equity, re-titling property could have its advantages, Cooper says. For example, it allows for survivorship rights. It could also protect the house from being targeted by creditors in the event that either the bride or groom has debt.

By definition, marital property is acquired during marriage. But an inheritance or a third-party gift received by one partner is not considered marital property. “In the event of a divorce, those things are not in the pot,” says family-law attorney Sally Gold. “If you have received money by inheritance, it is non-marital property. But if you take that money and put it in a jointly titled bank account, you comingled it and it may have lost its definition as non-marital property.”

If a wedding gift was intended specifically for either the bride or the groom, make sure that is understood. For example, the couple could be given an antique that belonged to the bride’s grandmother. “Wedding gifts can be the subjects of fights if a marriage ends,” Cooper says.

### FINANCIAL HEALTH

Money issues are probably the number-one source of friction in a marriage, but talking over related issues ahead of time can avoid some future problems, says marriage counselor Barbara Fox.

“Tell each other about your financial health,” she recommends. That means coming clean on school loans, debts, assets, and, importantly, your credit history.

Sometimes when a couple gets married, they don’t know that one person has a bad credit score or that they are coming into the marriage with a lot of credit-card debt. If not discussed before, the matter usually rears its ugly head when they go

to buy their first house and apply for a mortgage.

When couples combine their incomes, they should do a budget. But even if you combine incomes, many people like to have their own money. For that reason, financial advisors see couples today that have three or four accounts—a joint checking and savings for common expenses and a personal account for each spouse, so if the husband wants to buy tickets for a sporting event and the wife wants to shop, they don’t have to ask permission or feel guilty.

### A READING OF THE WILL

Young couples with limited assets and no kids yet may not have to put a will at the top of their to-do lists. But for older couples with significant assets, perhaps acquired before the current marriage, or for those with children, or children on the way, a will becomes much more important. And it should be updated regularly, or whenever there’s a significant change in assets or family status.

The will is also a good opportunity to establish a relationship with a local attorney specializing in estate planning to ensure the finished product is compatible with the laws of your state, and is savvy regarding federal and state tax avoidance. (That’s the *legal* strategy; tax *evasion* is the one that gets you in trouble.) And that relationship will be meaningful later when you need his or her advice on how best to invest, protect, and, ultimately, distribute your assets.

Also, when crafting a will, remember to change beneficiaries on life insurance and pensions or 401(k)s. Consider an advanced health-care directive spelling out what you want to do in the event of an emergency.

You may want to designate someone to have power of attorney. This would allow the other person to make financial choices if you are not able. The couple should also discuss who is going to carry insurance. ✱