

I Want a Prenup. How Do I Ask for One Without Offending My Partner?

The topic of love and money can be sensitive, but financial conversations are an important part of any serious relationship—especially when marriage is on the table. In this episode, host Stefanie O'Connell Rodriguez sits down with Beatrice Leong, a divorce and family law attorney, to discuss what Julia, and all couples considering marriage, need to know about getting a prenup.

Julia: When my ex-husband left, he immediately took half of our savings, put it in a different bank account, I didn't even know about it. I just don't want to be put in a situation again where I lose money.

Emily: So I essentially had to pay him alimony for three years to buy him out of a house that he had never paid for.

Maria: I wish I had been more vocal about reigning in our spending I think that was part of our relationship that contributed to the divorce.

Jasmine: My conception or maybe misconception of prenups come from all the bad things that you see in the media.

Christine: No one goes into it thinking like we'll probably split up, but anyone can split up as confident as you are.

Stefanie O'Connell Rodriguez: This is Money Confidential, a podcast from Real Simple about our money stories, struggles and secrets. I'm your host, Stefanie O'Connell Rodriguez. Our guest today is a 32-year-old HR professional based in the Midwest who we're calling Julia—not her real name.

Julia: When my ex-husband left, he immediately took half of our savings, put it in a different bank account, I didn't even know about it.

We lost money on a home, so I didn't end up recouping a lot of that. And then the big one was the 401k situation. He had a pension with his job. As a result, I didn't put as much money into my 401k, because we are counting on that to really get us through retirement. But then when we got divorced, I didn't have as much in my 401k as I could have been saving, but I didn't get much of his pension because it wasn't vested yet.

So, I just feel like I took, you know, two, three, four steps back from, in terms of my financial situation. And that was really stressful for me.

Stefanie O'Connell Rodriguez: What's the biggest financial lesson learned from your divorce?

Julia: I just don't want to be put in a situation again, where I lose money. I lose out on all the hard work I put into savings and my 401k because of someone else's decision or circumstances beyond my control.

I don't want to be greedy or selfish with it. I just want to make sure my assets are protected if the worst case scenario were to happen.

Stefanie O'Connell Rodriguez: Around two years ago, Julia started dating her now boyfriend.

Stefanie O'Connell Rodriguez: Do you remember the first time money came up in your relationship?

Julia: We were in the car on the way home from visiting his family and he actually brought up his philosophies and what happened to him growing up.

I think the first one was credit cards and debit cards.

His family didn't believe in them, which I understand from a debt perspective, but my family was always big about build your credit history.

And then I pay it off in full every month. And then I think the other one is, savings account. His family didn't really talk about having a separate savings account, which meant when I met him he said he only had one checking account and that's where all of his money went.

Whereas for me, I've always had separate checking and savings, whether I'm automatically pulling money into my savings or doing it manually. I'm always moving it over and I have a savings goal.

Stefanie O'Connell Rodriguez: So given those differences, what did it look like to kind of get on the same page?

Julia: We just had a lot of conversations at different times. For example, one of them was about credit score and how could we help build up his credit score?

And quite honestly I don't remember exactly the words I used or things I said, but it's probably somewhere along the lines of you know, as we think about saving, here's what I'm doing. What are your thoughts around, how much do you want to save together? What are your goals for the future? And we just try and keep it as fun or as lighthearted as possible. But I don't bring it up too often because it can be a lot to think about.

Stefanie O'Connell Rodriguez: Does he ever bring it up?

Julia: *[laughs]*

Stefanie O'Connell Rodriguez: Oh, that seems like a telling laugh.

Julia: Yeah, he doesn't bring it up a lot. He's very open and receptive when I do. But yeah, he's normally not the initiator.

I don't think he doesn't want to talk about it. I just don't think he thinks about it like I do. And I also think he's told me in the past that his previous relationships didn't have these conversations or if they did, they did not do them successfully and it turned into much more of a contentious discussion.

Stefanie O'Connell Rodriguez: As the relationship between Julia and her boyfriend has progressed, so have their financial plans and goals.

Julia: Right now I am living in an apartment with my boyfriend.

We are trying to save up for hopefully a wedding, a honeymoon, and obviously the biggest one is a house down payment.

Stefanie O'Connell Rodriguez: While Julia and her boyfriend have initiated a healthy financial dialogue, they're still navigating big financial differences as they plan for a shared future. While he has a low credit score and minimal savings, she has over \$70,000 saved and a credit score in the 800s.

Julia: So in preparation for potentially getting married, buying a house, I want to make sure that I do it the right way, especially because I'll be the one primarily putting my money towards that due to my larger savings and ability to save money at this point in time.

I want to make sure that I protect myself in addition to also building a strong, equitable financial future for both of us.

When I brought this up saying, you know, a lot of the savings for the down payment is going to probably come from me. And I want to make sure that that's thought about. He's very supportive of it.

I have brought up potentially doing some kind of prenup. But we don't know what that means.

Stefanie O'Connell Rodriguez: Do you remember the context of that conversation? Like, was it, will you marry me? Will you sign a prenup?

Julia: No. I think we're talking about saving for the house and we were talking about how much money I had already saved, how much money we would need to save. His current situation, because he's paying for school out of pocket and building back his savings after being unemployed.

And we basically realized I'm going to be putting the majority of the down payment. And I think I said something along the lines of, if I'm going to be doing that, do you think we should set up something? And he was open to it because I've shared a lot about my previous relationship and what happened emotionally and financially.

But I think it would just give me peace of mind.

So, I mean, I'm probably contributing \$75,000 to this. And I know that if the worst were to happen, you, if you don't have a prenup, you just split the assets. And so then it's like, well I don't want to use the word screwed over, but I feel very much like it's an unequitable distribution at that point, because now, even though I put, let's say a hundred percent down now, we're splitting it 50/50.

Stefanie O'Connell Rodriguez: According to a study from the American Academy of Matrimonial Lawyers, prenups are becoming more [popular](#), notably among millennials, many of whom are children of divorce themselves and on average, marry later in life, having already accumulated their own assets and debts beforehand.

Like an insurance policy, a prenup isn't created with the expectation of divorce, but rather to be protected should divorce happen.

Julia: How could I structure a prenup that would protect my very large and maybe sole financial investment in a home, if the worst case were to happen in a divorce.

Stefanie O'Connell Rodriguez: The other benefit of a prenuptial agreement is that it forces partners to communicate about their financial goals, expectations, spending and savings habits and their accrued assets and debts, before getting married.

Julia: We do not have any combined finances.

I keep a spreadsheet of what he's paid for both of us and what I paid for both of us. And then, uh, we will Venmo each other the difference at the end of the month.

Stefanie O'Connell Rodriguez: And how does he feel about your setup?

Julia: He's fine with it right now. I think we've both casually mentioned wanting to keep separate checking accounts and then having a joint checking account and a joint savings when or if we get married, but we're just not sure, again, the details of that. What does that look like? Is it the same bank? Um, how much should be put in there, et cetera?

Stefanie O'Connell Rodriguez: What are you most fearful of in relation to this discussion?

Julia: I am most fearful of repeating the same mistake of combining everything without any sort of protection upfront.

But if the worst were to happen and we were to get divorced, I would lose money and be five steps back. Even though I was the one who primarily contributed to a house or to our future, I just don't want to feel like I'm losing out again. Like I did with my previous situation.

Stefanie O'Connell Rodriguez: Do you feel like you can talk about this with anyone besides your boyfriend?

Julia: I've been able to talk with a counselor about it before, but that's more of a personal counselor versus a financial but yeah, it's really hard to talk about with parents or other people because it's very private and you don't want anyone judging your situation and your significant other.

I mean, quite honestly, before getting divorced, I was probably a little judgmental of prenups, unless there was a severe financial discrepancy between two people or a business but it's interesting I think after my friends and family watched what happened to me, they have a different viewpoint, so there's not as much judgment.

Stefanie O'Connell Rodriguez: Have you experienced any of that kind of negative reaction or judgment before?

Julia: Not towards him specifically, but my ex and I had a very similar situation where I supported him for a while until he got his career so when he was on unemployment, I was the one basically paying all the rent.

I built up our savings, et cetera. And I think there was a little bit of judgment from family or friends at that point. I don't think intentional, but you could just tell that there was a little bit of, 'Oh, that's a shame,' or 'I feel sorry that you have to do that.' I wish he could support himself or I wish you could be more equal.

Stefanie O'Connell Rodriguez: What does it mean to you to be equal in a relationship?

Julia: To me being equal is making decisions together more than anything and having an equal effort and contribution. So for me, I think the equality is less about the results. I'm okay with putting more money down because that's an investment in our future.

I just want to make sure that we have an open conversation about it, that we both have input into the decision.

That's what having an equitable relationship means to me, even if the outcome or the input's a little bit different, that we make the decision together and openly communicate about it.

Stefanie O'Connell Rodriguez: While talk of prenuptial agreements has historically come with a lot of stigma and misconceptions, more and more couples are signing a prenuptial agreement before getting married, not because most of us are ultra-wealthy or planning to get divorced, but rather, to come to an agreement early on about what an equitable marriage looks like.

As my own attorney put it, everyone effectively has a kind of prenup. If you don't create your own, you simply default to the divorce laws of your state. So after the break, we'll be speaking to an experienced family law attorney about what we all need to know about prenups and postnups.

Beatrice Leong: It's only about money. Okay? Marriage is nothing but money.

Stefanie O'Connell Rodriguez: That's Beatrice Leong, family law attorney and founder of the Law Office of Beatrice Leong, chatting with me about marriage, from a legal perspective.

Beatrice Leong: You can be in love. You can live with somebody.

You're going to have six of their children and you can never be married and that'll be fine. Your relationship will still be loving. The difference with marriages, it's the delineation for the court system. They say to you, okay, because you tell me that you're married, now you have a contract between husband, wife, and the state of New York or the state or whatever state you live in.

You know it literally is this contract with the state so that if you tell the state, I love my spouse so much. I'm going to be in a contract with you guys. I will give them and take care of them pursuant to the laws of your state.

So marriage really is only about money. Nobody thinks of that because we watched Disney. We watch love movies and romantic comedies, and you think, oh, we're gonna wear a white dress, walk down the aisle. And that's what it's all about, because you know, my husband is crazy about me. No it's not. Really marriage is to combine forces, you know, combine finances. So the prenup really sets the tone.

Stefanie O'Connell Rodriguez: While most of us probably don't get married *because* of the legal and financial implications of marriage, it's important that we know and understand those legal and financial implications before we enter into it, much like we should understand the impact of any other major contract or partnership that has the potential to affect our own well being.

Beatrice Leong: The main thing that people worry about are their emotions. But in a divorce, the court does not care about your emotions and they only care about your money.

Stefanie O'Connell Rodriguez: Man, that's such a powerful way to think about a prenuptial agreement. because this is about protecting dollars and cents. This isn't about invalidating your feelings. But I feel like when I talk to people about it, it's really hard to get them to see it through that framework.

Beatrice Leong: You're absolutely right. When people with money approach their fiance, their fiances get very offended. They're like, 'You think I'm some kind of gold digger? How dare you? I thought you loved me.'

I like to tell people, think of it as a house insurance policy.

When you buy a house, when you rent an apartment, they always say, please purchase a policy, right. Just in case your house burns down. So I tell people think of it this way.

The prenup is there, right? You sign it, you put it away in your safe deposit box. You'll never think of it again. You're married, you know, like *The Notebook* and you die in each other's arms? Great. That prenup will never surface again. However, there is your insurance policy that they don't walk away with all your pre-earned money, your premarital money, and your family money. So I think of it as an insurance policy. You pay for car insurance every month, you know, but a prenup is a one-time thing you pay for, and then you have it for the rest of your marriage.

Stefanie O'Connell Rodriguez: Were you a divorce lawyer before you got divorced?

Beatrice Leong: I was not, I was in law school and I had just graduated and passed the bar, but I wanted to be a prosecutor. It was my dream to be, you know, law and order.

I was interviewing for the local DA's office here, but then I caught my husband cheating and sort of my whole life got switched around. I paused the whole job search and sat in my mom's house for 10 months just thinking about life and what I'm going to do next.

And I woke up out of that funk and I said, there is no way I can just go ahead and be a prosecutor. Now I need to learn how to divorce because I'm going to leave my husband. So I went and searched for a divorce lawyer job.

I had no intentions of going into family law. It's very emotional, but because of my ex-husband, he sort of changed the course of my life.

Stefanie O'Connell Rodriguez: Beatrice Leong has since become an experienced family law attorney and recently started her own practice. She also got remarried after going through a divorce. So given both her personal experience and her professional expertise I asked her to talk about who really needs a prenup.

Beatrice Leong: If you have a property, I would say automatically do a prenup, right? If you have any retirement accounts and stocks or anything of value that could be commingled in a marriage, I would say, definitely do a prenup. In New York there's a law called the commingling law. So let's say you had a hundred grand, Stefanie, before you meet your husband you had a hundred grand and you leave it in your account, but you separate that account. You keep depositing your paychecks in there. It will become commingled so that your separate monies, if you even had a hundred grand, it could be part of the marriage and then given to your husband or your spouse at divorce later on. So if you have any assets that you care about, if you have any property or potential inheritance I would say a prenup is a safe way to go.

Stefanie O'Connell Rodriguez: I think this is a really good segue into our specific listener story this week. she's 32 years old and she's considering a second marriage. And one of the things that she wants to do with her higher earnings is put down the down payment on a house for both of them.

Beatrice Leong: Any divorce and matrimonial attorney should be able to do that. And I recommend to your listeners, you have to go with the divorce lawyer. Don't just Google a random person who does trust and criminal law. You have to get somebody who specializes in divorce and family law, meaning somebody who doesn't do like 16 other fields of law.

Because I always say, you know, if you had a toothache, you wouldn't go to a podiatrist, right. You would go to a dentist. So you have to get a specialist who knows and can anticipate what's going to happen 30 years from now, five years from now.

She would say, 'I am putting down blank and this is my separate property no matter how much times we change houses, right?' Because you know, people move all the time.

That separate portion will always be hers. And then sometimes people even write in if the house increases, I still get that separate property because at least in New York, when a property increases your spouse gets to share it in the increase, the passive increase. So if you bought a house in 1989 in an, you know, up-and-coming neighborhood, and now it's worth a couple of million, your spouse, technically, you can get half of that couple of million. Sometimes people write that in as well.

Stefanie O'Connell Rodriguez: I also liked the prenup because I think it forces a conversation that needs to be had before people get married.

Beatrice Leong: Exactly. there's a famous quote that says a prenup doesn't prevent a marriage, it prevents a divorce, right?

Because if you never married the person because you realize, oh my goodness, we have totally opposite financial views. You know, he's a free spender, loves to gamble every week, has a million dollars in credit card debt and then expects me to support him versus two people who are like, yeah, we should save every penny, we should spend only 10% of our income and everything else should be in a stock. You know, it forces a conversation between the new couple. Because again, you're so happy and you're still in love. You don't think about something as basic as who's going to pay the light bill?

Um, what if one of us loses their job? You know, like what will happen?

Stefanie O'Connell Rodriguez: You talked about commingling which is another thing that came up in my conversation with the listener. She's like, okay, well I want to put the down payment down on the house and I want to protect that, but I also just want to protect myself generally in the way that I am setting up all of our accounts.

You know, if we are gonna open a joint savings account, if we are going to have these these things that we share and we both contribute to, what are the things I need to be taking into consideration?

Beatrice Leong: Yeah. So from the date of marriage, in the state of New York, everything that you earn is considered marital.

So people need to consider what is, what they really want to be separate and what they're willing to turn into a marital fund. Right? So if you have premarital savings, I would recommend that you open a brand new joint account, like the day after the marriage.

I'm actually remarried. A week after our wedding, I would open a joint account with my new spouse to make sure that there's a clear delineation between what I had before and what I'm

going to have going forward. So open a joint account, and that will be the one you'd deposit your money into. The prenup you can sort of decide what you want to split. Right? So some people say, I want to put a hundred percent of my earnings and my spouse put a hundred percent of their earnings into this joint account.

And they put that in the prenup. Or they'll say, I want to put 60% to the marriage and 40% will be my separate money. I can do whatever I want with it. I can go wild with that 40%. And then it will never be touched in a divorce. And that's what a prenup is, what we'll write, spell out how the money is split and shared and used during the marriage.

And sometimes people say no money is going into the marriage. Meaning if one becomes a billionaire and the other is dead broke. They're still not gonna share that money. So, you know, everyone is different and every couple is different. It's up to the couple what they're comfortable with.

Stefanie O'Connell Rodriguez: I feel like when I talk to people, there is an assumption that if it's not in a joint account, then it's my money.

Beatrice Leong: That's really wrong. Yeah. That's a rude awakening in every divorce case. They'll say we never mixed money. I only deposited my paycheck since I was 18 years old since my first job as delivery boy.

I'm like, I'm sorry. It's all been commingled. You know you're still going to have to give half of that over. Because it's been commingled, so it doesn't matter whose name it isn't.

So that's an important thing for the listeners to know. In a marriage, again, the court's going to look at you as one entity. You have a contract with the state, your spouse has a contract with the state. It doesn't matter whose name it's in. If you don't have any prenup to protect you and you keep depositing it in your, you know, your bar mitzvah money, it will be mixed in with your hedge fund money. You know, it's all mixed in. Okay? [laughs] So it doesn't matter if you had the little piggy bank since age 13. That's the big thing nobody realizes. Once you deposit earnings after the marriage, it's mixed.

Stefanie O'Connell Rodriguez: Yeah. What about debts?

Beatrice Leong: Debt is another thing that I always make people have a paragraph or a page or two in the prenup. Because anything that is collected in a marriage debtwise is also shared. So you say your vows in sickness, in health, in good times and bad. So that bad night in Vegas, you share that with your spouse—so please you have to let the other spouse know that. Listen, you got to tell me before you max out a car, you got to tell me before you loan all the money to your neighbor or before you go to the racetrack.

So I have sections in my prenups that have that talk about debt. They're like each party will have to share. If they're going to go into debt over \$5,000, they better share. Tell the other person in writing. If there is no notice, then that's your own separate debt.

If you have law school debt, medical school debt, you definitely put that down so that's clear that, hey, in the case of divorce, I'm not expected to pay this, this debt of yours.

Stefanie O'Connell Rodriguez: I also want to briefly touch on post-nups. What is the scenario in which somebody needs a post-nup?

Beatrice Leong: So post-nups are for after marriage. Post-nups are also good for people who rushed into marriage for some reason, you know, a pregnancy or something else. And he didn't have time to draft together a prenup. I don't recommend doing prenups close to your marriage date. Right? Because people can say 'I had my family flying in from Greece and he forced me to sign a prenup.'

Post-nups are good for people who are newly married and say, now that we have the contract with the state, I want to make a new contract, a post-nup between us.

Let's say your husband has a lot of debt and you want your portion of the funds protected. You can sign a post-nup for that. So, somebody's chasing after your spouse, they owe a ton of money and they want to protect you.

They sign a post-nup saying, 'I met my wife, this certain amount I'm going to transfer it to her now. And that's her separate funds. Then they do it that way because they want to stay together and they don't want somebody else grabbing that money.

Stefanie O'Connell Rodriguez: I feel like every one of your stories reinforces this mantra of marriage is about money.

Beatrice Leong: Correct. Back in the day marriages were really a business transaction. Your wealthy landowner daughter is going to marry the next town over, landowner's son. And it was to merge family wealth over the years in America.

We think of marriage as love. But traditionally, you know, a thousand years ago it was all about money. And I think maybe we'll coming to a full circle back to marriage is about money.

Because I think people are now realizing, oh my God, I've seen my mom and dad divorce for the last three years. And they're still fighting over whatever. People are realizing, wait a minute, I can be in love and just live with him.

I don't have to marry him.

Or I want to marry somebody because I want to build wealth. Right. I want my successes and his successes to be mixed in because it will be easier just to become wealthy as a couple versus if you're just a single person.

Stefanie O'Connell Rodriguez: It's really interesting to think about it as a wealth-building vehicle.

Although, you know, you could really squander that if you don't have a prenup in place and you get divorced.

Beatrice Leong: Right, or you have a spouse that squanders away the money for you. I have a case where the couple is a little older, over 60, and the wife took a chance and gave her entire retirement account, her life savings, retirement account to the husband to like put into a stock and it went to zero. So she's over 60, no retirement savings because the husband's squandered away everything.

So that is a perfect example. Definitely get a prenup, just say no one's touching that no matter what, I'll have that at the end, but you know, again, people don't think about this when they're in love.

Stefanie O'Connell Rodriguez: Thankfully, Julia *is* thinking about her finances as she and her boyfriend start to make plans for the future. While it might not be quite as fun as shopping around for potential wedding venues, hiring an experienced family law attorney to talk through, draft and execute a prenuptial agreement should ideally be done before any other wedding plans are made to remove any time or other pressures that could call the validity of the prenup into question.

Both parties should hire their own, independent legal counsel to ensure their best interests are represented throughout the process.

A family law attorney in your state will be able to advise you on how to handle investments you've made going into the marriage-- if, for example, you're putting the full down payment on a home, like Julia is--while also addressing potential future unknowns, like how assets from an unexpected inheritance would be distributed.

Ideally, this process should include full disclosure of all financial information like income, debts, assets and potential future inheritances for both partners. Not only does a prenup give couples a chance to define what an equitable distribution of those financial assets and responsibilities would look like, it also brings critical conversations about what an equitable marriage means to the surface, helping couples communicate, compromise and align on a shared financial value system that can support the commitment they're making through marriage.

This has been Money Confidential from Real Simple. If, like Julia, you have a money story or question to share, you can send me an email at money.confidential@realsimple.com. You can also leave us a voicemail at (929) 352-4106.