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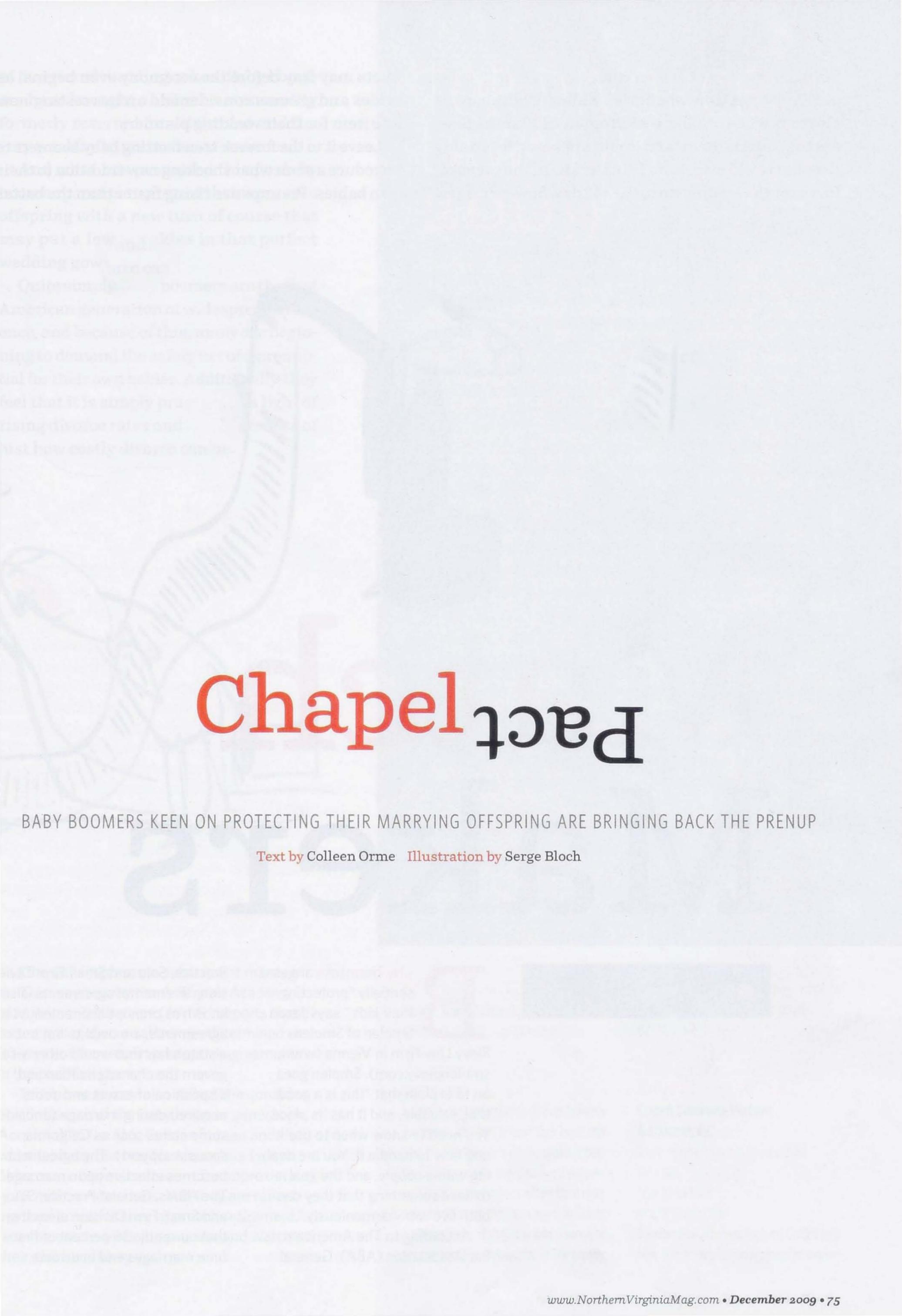


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Michelle Feldman, education di-
rector at the University of Virginia,
has an opinion on all types of fair-
ness in education. She's progressive.
Her young son, 6, is a "progressive."
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Pact Chapel

BABY BOOMERS KEEN ON PROTECTING THEIR MARRYING OFFSPRING ARE BRINGING BACK THE PRENUP

Text by Colleen Orme Illustration by Serge Bloch

Spring has always been an enviable choice for brides and grooms. A time when crisp white wedding gowns blossom, when couples wed as organically as the flowers that adorn them, and knots are being feverishly tied, the world over. Love is in the air. In the preparatory months leading up to the big day, however, a few

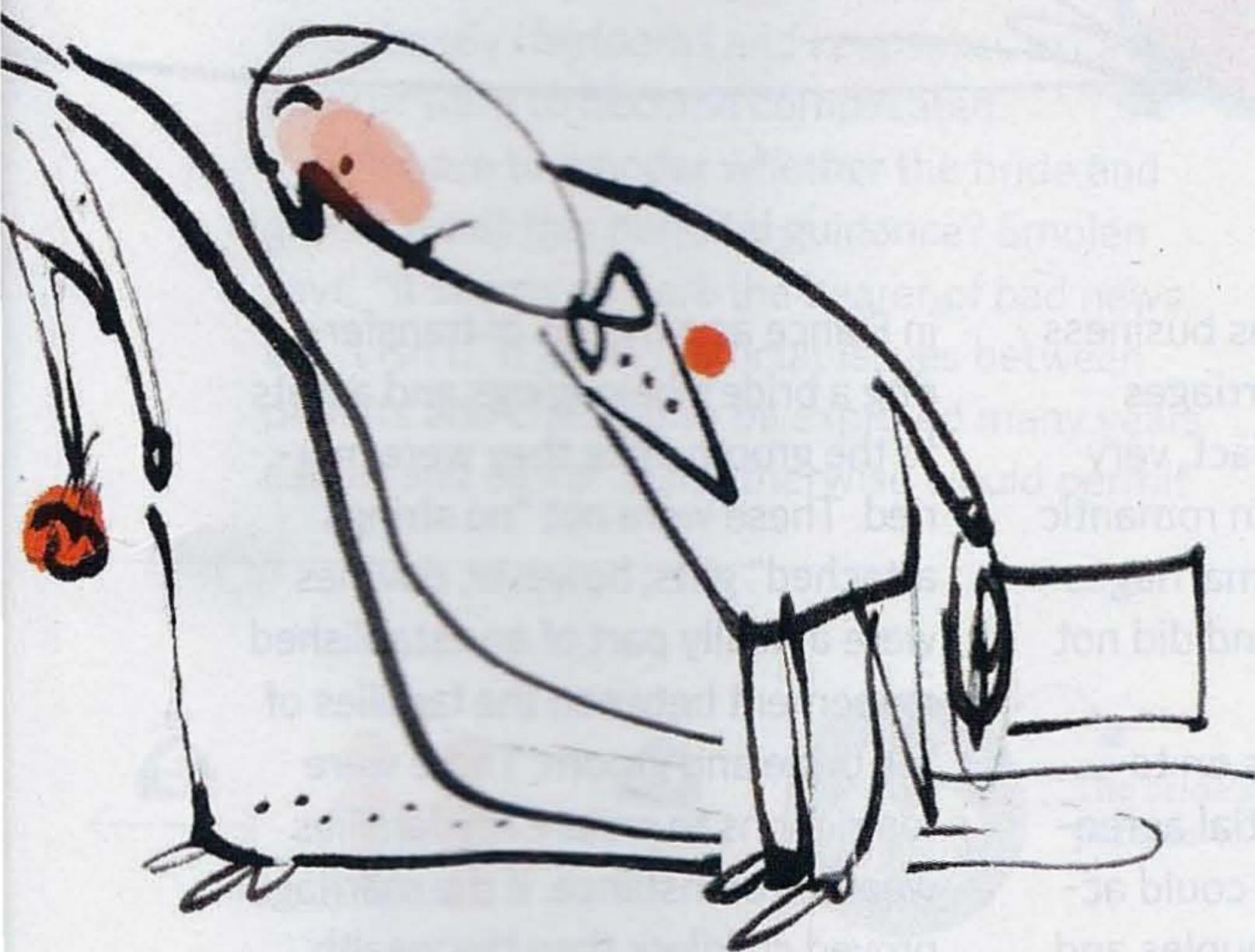
knots may fray before the ceremony even begins, as brides and grooms consider add an interesting new line item for their wedding planners.

Leave it to the forever-trendsetting baby boomers to introduce a somewhat shocking new tradition to their own babies. Prenups are rising faster than the batter

of five-tiered wedding cakes. Baby boomers have brought an elusive commodity formerly reserved for celebrities and the very wealthy to mainstream America.

And what has prompted this push by boomer parents to protect their very own offspring with a new turn of course that may put a few wrinkles in that perfect wedding gown?

Quite simply, baby boomers are the first American generation of widespread affluence, and because of this, many are beginning to demand the safety net of a prenuptial for their own babies. Additionally, they feel that it is simply pragmatic in light of rising divorce rates and the awareness of just how costly divorce can be.





Match Makers



Baby boomers are essentially “protecting their kids,” says **Jason Smolen** of Smolen-Plevy Law Firm in Vienna (www.smolenplevy.com). Smolen goes on to explain that “this is a good tool, valuable, and it has its place. You need to know when to use it and how to handle it. You are dealing with a couple, and the goal is to have something that they can both live with harmoniously.”

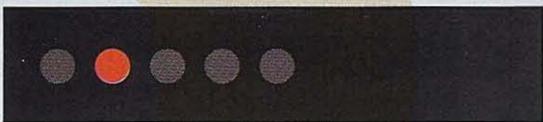
According to The American Bar Association (ABA), General

Practice, Solo and Small Firm Division, “Premarital agreements, also known as prenuptial or antenuptial agreements, are used to opt out of a state’s law that would otherwise govern the characterization and disposition of assets and debts acquired during marriage (and, in some states such as California, spousal support). The agreement becomes effective upon marriage.” The ABA’s, General Practice, Solo and Small Firm Division also cites that currently, 36 percent of first-time marriages end in divorce,

and the rate increases in subsequent marriages. This may be why the American Academy of Matrimonial Lawyers (AAML) reports that a recent poll of divorce attorneys determined an 80-percent increase in prenuptial agreements in the past five years.

This increase may also reflect the considerable influence of the baby boomer generation. According to the U.S. Census Bureau and the website, Baby Boomer Headquarters (www.bbhq.com), boomers account for approximately 78 million Americans, and they are reflecting their power as they approach retirement, face the estate-planning process and watch their children marry.

Celebrity Settlements



Some famous boomers have long utilized—or failed to utilize—the legal system to protect themselves. Donald Trump has had prenups for his multiple marriages, and his first marriage to Ivana Trump challenged their prenuptial agreement when the marriage dissolved. And fellow celebrity boomer Rosanne Barr famously refused to sign a prenuptial agreement when her attorney suggested one before marrying Tom Arnold. She later paid millions for neglecting to do so.

Consider for a moment, that many Western European countries currently have laws that almost demand a prenup. In these countries, it is not uncommon to have couples face certain issues of wills and trusts before they get married. Though in varying degrees of complexity, they do force brides and grooms to approach issues that here in the United States we otherwise avoid until after being married. This variation may be due to the fact that Western European history illustrates that many mar-

riages originally began as business contracts. Arranged marriages were commonplace. In fact, very little value was placed on romantic love, and initially many marriages were simply contracts and did not involve ceremonies.

So, are baby boomers on to something? Are prenuptial agreements a useful tool that could actually be beneficial to couples and not leave us with that cynical feeling that both words imply? Do we here in the States leave too much to love and not enough to planning? Is there more to prenuptial agreements than we believe?

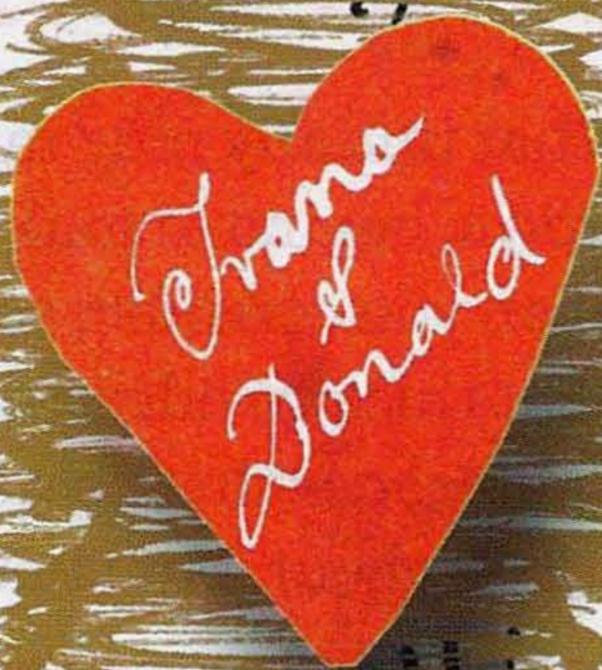
While in present years, they have evolved into the “ugly” pre- and post-aftermath of many a celebrity and socialite wedding, they are actually rooted in the history of both our very own country and the world at large.

They are believed to have initially begun with the ancient Egyptians whose parents would negotiate the terms for the bride and groom. Over the years, many more variations of this modern-day agreement have evolved. Dowries began

in France as a means of transferring a bride’s belongings and assets to the groom once they were married. These were not “no strings attached” gifts; however, dowries were actually part of an established agreement between the families of the bride and groom. There were restrictions to ensure the families wealth. For instance, if the marriage proved childless then the wealth was to be returned to the wife’s family in the event of the husband’s death or remarriage.

In the Jewish community, the Ketubah was established by rabbis as a substitute for the “dower” or “bride price” that grooms could not afford to pay the bride or her parents before marriage. The rabbis insisted couples enter into this before marriage so that the bride was protected and would be taken care of financially in the event of divorce or death. In effect, the groom was then paying the “dower” or “bride price” later in the marriage. The Ketubah is 2,000 years old and is one of the first legal documents to ever give rights to women in marriage.

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In England, the earliest prenuptial agreements believed known was drafted somewhere between 1461 and 1464 between Edward IV and Eleanor Butler. The stories of this Medieval England saga are contradictory and the subject of much controversy. Not only is Edward IV believed to have the first premarital contract, but it is believed to be what cost him the throne to his younger brother, Richard III. It seems that Edward IV secretly married another woman, Elizabeth Woodville, though he had already entered into a "precontract of matrimony" with Eleanor Butler. Richard III used this to create The Titulus Regis Act, which stated that the marriage was illegitimate because of the "precontract of matrimony" and that because the marriage was not valid, Edward IV was not fit to inherit anything, let alone the throne. Thus, in January 1484, Richard III claimed the throne, though controversy still remains as to with whom Edward IV had actually entered into a premarital contract—Eleanor Butler or one of two other women.

In the United States, before The Married Women's Property Act of 1848 became law, everything in a marriage transferred to the husband. Therefore, if a woman's husband died or left her she was often left homeless and penniless. History all over the world and here in our own country reflects varying degrees of enforcing some type of prenuptial agreements since bride and grooms have attempted to marry.



Protection or Pres

What initially may raise a few eyebrows, begins to make more sense when you consider, says **Smolen**, “that this provides a catalyst for difficult issues that people don’t want to talk about, but should. When you don’t talk about it, and people have different expectations, that’s bad. Anything that serves as a catalyst to talk about economics and see what expectations they have of each other are important economic issues to decide at the onset.” **Smo-**
len goes on to say, “People are doing things more with their eyes open. They realize that a significant amount of marriages don’t make it, so why litigate everything? Why not work some of those things out beforehand with a prenuptial?”

When asked whether or not he believes that prenuptial agreements make people think more

umption?

seriously about marriage, **Smolen** says, "it makes them focus on the non-romantic issues of marriage, and it might give them pause in a good way. If they can get through some of those issues now then they can possibly get through a lot more later in their marriage."

Smolen goes on to explain that, "many parents find this beneficial when you consider the fact that oftentimes the family dynamic with our children changes once they get married." The prenup protects children and grandchildren both monetarily and in the distribution of cherished family heirlooms and keepsakes in case a divorce were to become complicated.

We have to wonder whether the bride and groom resist this parental guidance? **Smolen** says, "It seems you are the bearer of bad news, but it isn't." It allows difficult issues between parents and children to be explored many years earlier and easier than otherwise would permit.

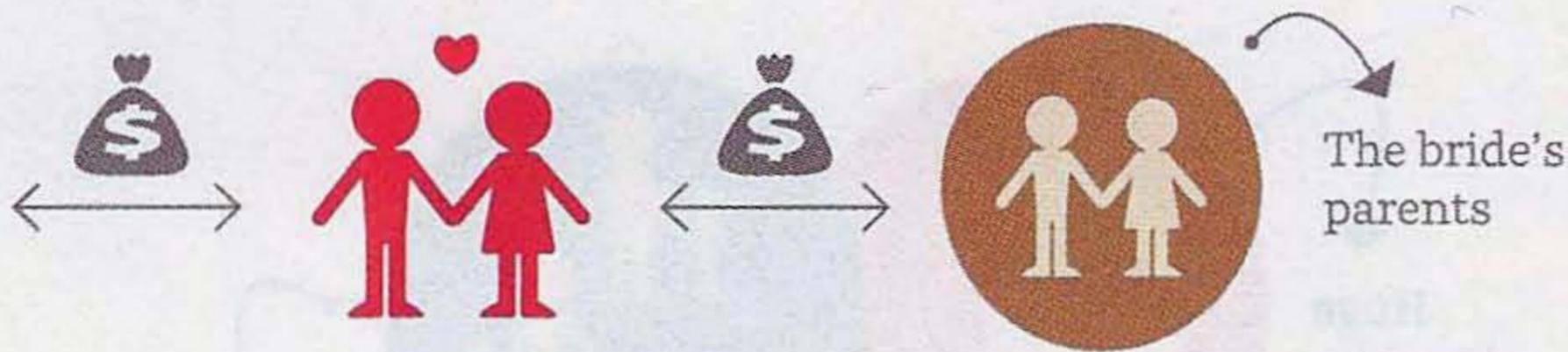


Exhibit A

The groom's
parents



Take for example, one instance where **Smolen** counseled the parents to be of an eager groom. The parents loved the bride-to-be. They felt that the couple was meant to be together, happily in love, and that both were hardworking, well-intentioned, young people. Additionally, the bride and groom were both gainfully employed, happy and though possessing very good incomes, were never going to necessarily be wealthy. The parents of the groom, on the other hand, had acquired considerable wealth in their lifetime. They had absolutely no fear that the bride was in any way money-oriented. It's just that as they entered the estate-planning phase of their life, as all parents, they wanted the best for their children, especially when they would no lon-



ger be around to ensure it.

So here you have it. In this particular situation, there was nothing but well-intentioned parents voicing their concern while planning for their own future and their assets and where they would ultimately end up if there were to be no children from the marriage or the marriage were to end in divorce. Though they loved this new person who was to be a wonderful addition to their family, they needed to know that if the worst were to happen that their assets would be distributed among their remaining children and grandchildren.

Smolen made sure to address the parental concerns, consolidate the estate-planning issues and at the same time protect the young couple from letting this become divisive in the most exciting and happy time of their lives. He spoke to all parties involved and explained that

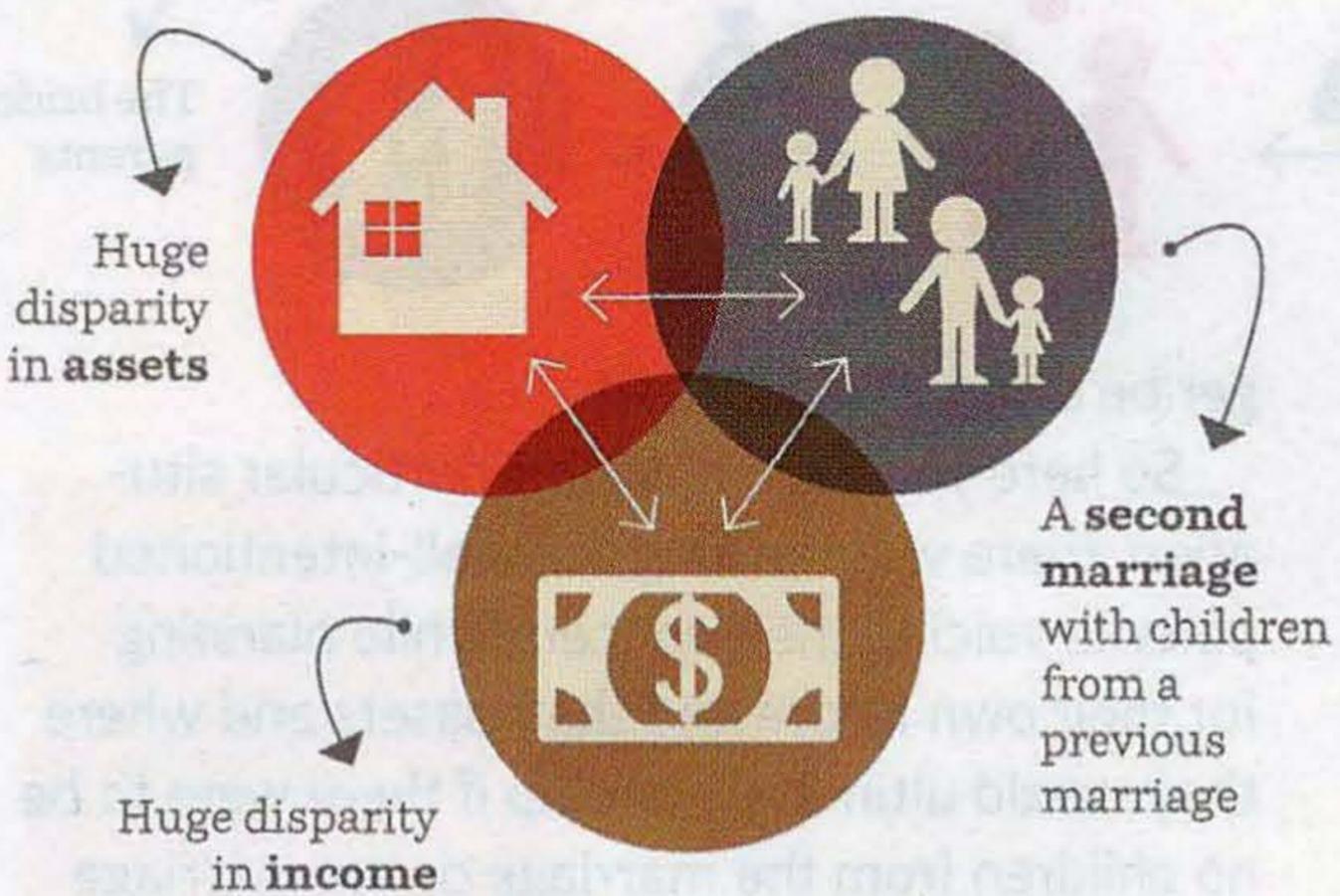
the most mutually beneficial way to address this was to construct a prenuptial agreement where in the event there were no children or divorce that the groom would inherit all that his parents had created.

Smolen then spoke with the groom and explained that he could create a will once he was

married and that when you “write a will you can give to anyone you want. You can give it to her, she just can’t inherit it. Both parties were happy with this arrangement. The parents felt relief. The bride and groom respected the parents and were given an avenue to explore down the road.”

Crossing the Thr

This story prompts the question, what other situations might demand a prenuptial agreement? What are the top three indicators that a prenuptial agreement may be a necessity? **Smolen** believes that there are three predominant factors that may prove to be good indicators to consider a prenu. They are:



Just how long before the wedding should the prenuptial agreement be negotiated? **Smolen** says, "At least six months before. This should not be put off to the last three months." Why? "Legal issues can come into play close to the deadline of a wedding such as ... coercion, failure to examine the document, giving the party who didn't draft the agreement the opportunity to challenge and say they were forced into it, that they didn't know what they were signing, etc.," **Smolen** explains.

eshold

Which begs the questions: Just what do you need to do to make sure your prenup is both binding and enforceable? **Smolen** suggests the following three essential tips to guarantee a successful outcome:



Leave it to the baby boomers to charge ahead and continue to define trends. Or possibly, in this case, return some aspects of marriage to its roots of origin and at the very least initiate an open discussion of the best way for Americans to combine our lust for love with the pragmatic reality of the legalities of marriage. After all, the boomers have long been rumored to “want to have it all,” so maybe they are the appropriate ones to lead the charge to make us examine the “uglier” side of love when the raw love itself still retains its “beauty.”

Who knows, this new epidemic may very well go from seemingly taboo to as traditional as cutting the cake. 