

LEGAL EASE



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Should we re-marry or just live together?

I love stories about couples who found love again after being widowed or divorced. Sometimes it is a situation where they knew each other many years ago, married other people and now find that they are free to love again. For older couples who have accumulated assets (and perhaps have grown children) the decision whether to marry again or not can be complicated. There may be religious reasons for choosing to marry but financial ones can muddy the waters. Elder Law Answers editors suggest some things to consider if you find yourself in this situation.

Estate planning. Marrying again, especially if you already have children, can have a big effect on your estate plan. In Pennsylvania, you cannot disinherit a spouse; he or she is entitled to one-third of your estate. Some couples do not want to disinherit each other but want to be sure that children of former unions will be remembered in the estate plan. Also remember that in Pennsylvania a spouse pays no inheritance tax but an unmarried partner will pay 15 percent inheritance tax on all monies received. Planning for blended families can be challenging but a good estate plan can make sure that your wishes are carried out. You may want to consider a pre-nuptial agreement prior to marriage (or post nuptial after the marriage) to ensure that both spouses agree not to take anything from each other's estate beyond what you plan on. Or if you want to leave something to your spouse but also to your children, then a trust might be the answer. Think also about the family home, where one of the spouses might own the home but two people are combining households. If the homeowner wants the house to remain in the original family, consider what the new spouse will do if the homeowner dies first. Provisions can be made to allow the surviving spouse to remain in the home until he or she wants to leave, must leave for some reason, or passes away. Be sure to discuss these issues with your estate planning attorney. Your attorney will tell you if you need separate counsel. Also, review all contracts with Continuous Care Retirement Communities carefully as to whether a new spouse (someone merely cohabitating) is permitted under the original contract.

Long-Term Care. Trusts and pre-nuptial agreements will not necessarily protect either spouse in the event that long term care for either person is needed. Marrying can affect your spouse's Medicaid eligibility and your ability to retain assets. A long term care insurance policy, if you can afford it and qualify, may be a good investment. Marrying can affect your ability to collect VA benefits on a former spouse's record. A discussion with an elder law attorney can make these situations more transparent.

Social Security. Remarriage can affect benefits for widowed or divorced seniors already collecting benefits from former spouses. If you are divorced after at least 10 years of marriage, are age 62 years, and your former spouse is entitled to or is collecting benefits, you can collect on your former spouse's record. But if you remarry, you cannot collect unless your later marriage ends. However, widows, widowers, and divorced persons who remarry after age 60, can be entitled to benefits on the first deceased spouse's Social Security record. You need to decide if not marrying is financially better for you. Also be careful about marrying someone who is receiving SSI benefits; the combined household income can prevent the SSI beneficiary from continuing to receive benefits. There are similar rules for alimony (depending on the divorce settlement) which can end once you are living together or marry. Survivor annuities of public service employees and military personnel may be affected by remarriage.

If you have fallen in love again and are considering marriage later in life, it is worth a conversation with financial and legal professionals to make that all important decision with an informed attitude.