

FINDING LOVE AGAIN

How to Legally and Financially Plan for That Second Marriage

By Allan D. Bogutz

There are many joys in finding a partner for love again, especially later in life. With career paths settled, savings in the bank and many healthy years in the future, you now can enjoy your pastimes and life: travel, relaxation and family.

For many of us over 55, there may be a second marriage on the horizon. Later-in-life marriages raise a number of social and legal issues that should be addressed by both people, hopefully in advance of the marriage ceremony. When younger persons marry, they are usually beginning their adult lives, have little savings, few assets and far less complexity to their lives. When older persons marry or remarry, each person is likely to have different levels of assets and savings, may have children from prior marriages, may own separate homes, may have different health insurance plans and different patterns of living, saving and spending.

In advance of the second marriage, there are a substantial number of issues to discuss that will result in an easier transition into the new married life. Consider the following:

- How will the new couple spend holidays? With which spouse's children will Christmas and Thanksgiving be spent?
- Who will pay for holiday and birthday gifts for the children and grandchildren? If the spouses have unequal resources, will one spouse's children get more expensive gifts than the others?
- Will the new spouses share household expenses? Will they share travel and vacation expenses?
- Where will they live, and who will own and pay for the family home?
- Who will provide for health insurance for the spouses?
- What will happen if one spouse becomes ill and requires care?
- What will happen to the family home if one spouse dies?
- What provisions will be made for the financial needs of the other spouse when one spouse dies?
- Do beneficiary changes need to be made on life insurance policies or retirement plans?
- Will one or both spouses be moving to a new state after the marriage? If so, what are the tax and estate-planning implications of such a move?
- What impact will remarriage have on current benefits such as social security or

pensions, or their income tax liability?

- How will future tax returns and payments or refunds be managed?

PRENUPTIAL AGREEMENTS

Prenuptial agreements address many of these issues. These arrangements are not only for the wealthy, they are essential for any couple dealing with the complexities involved with a second marriage, whatever their assets.

Such an agreement can provide a structure for the management of income of both spouses and outline who will be responsible for various housing expenses and other bills such as gifts and travel expenses. It will also serve as a record as to what assets and debts were brought into the marriage and how they will be handled by the parties, whether kept separate or commingled.

A prenuptial agreement can also provide direction as to what will happen if the marriage is not successful, setting out in advance who will receive which assets of the marriage in the event of divorce. This can also include provisions setting out plans for financial care of the surviving spouse when one spouse dies.

Drafting a prenuptial agreement is complicated and there are many factors to consider. Each spouse should have his or her own lawyer at some stage of the process — one lawyer cannot effectively represent both people since they have different interests in the completion of the agreement.

Don't look at the "prenup" as the start of an argument, look at it as a way to prevent misunderstandings in the future, and for both spouses to start the marriage with the peace of mind that some clarity and certainty provides.

BALANCING NEEDS

What about of the children of prior marriages? There is often a resentment of a new spouse by such children, often based on a fear that the new spouse might somehow cheat them out of "their" inheritance. They fear that their parent, smitten with the new spouse (who may also have children), will leave all the assets to the new spouse upon death. At the same time, the spouses do want to be sure to provide for each other after the death, if one should leave the other behind.

How can the needs be balanced? Usually, an agreeable arrangement can be found. The first spouse to die can leave a specific sum of money in trust for the survivor so that the trustee can use whatever funds are

needed to meet the needs of the survivor if the survivor's own assets are not sufficient. Then, upon the surviving spouse's death, the remainder of the trust is distributed to the children of the first spouse to die. Secondly, the surviving spouse will often be left the family home to use for life, with the home going to the children of the first to die on the survivor's death. This type of plan can meet the expectations of the children of the first marriage as well as providing appropriate security for the surviving spouse.

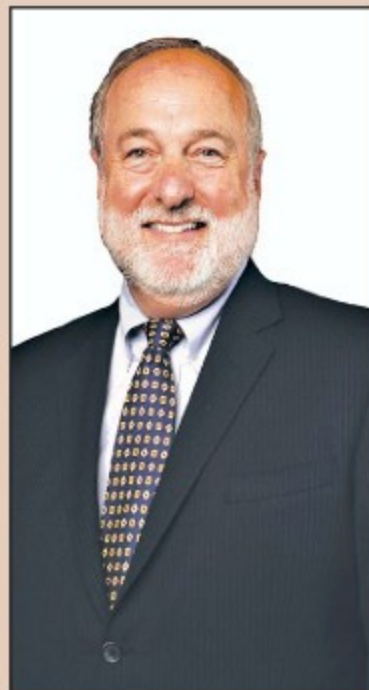
It is also incredibly important to address the issue of "stuff," which includes all those items of relatively limited value that the kids will fight over. In our experience, many disagreements happen over questions like "Who gets Dad's power tools?" or "Who gets Mom's toaster oven?" To manage this issue, a private discussion with each child is necessary to see what items they may specifically treasure — and to decide for yourself who will get some particular memento. Include these items as specifically separate in the prenuptial agreement and in the estate plan. Having your children

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know that you have addressed their concerns will take away many of the stresses that occur in blended families.

All of these arrangements can then be included in a properly drafted estate plan, which can either be a will or a living trust. Once the plan has been signed, it is often a very good idea to make sure that all of the family members know your decisions as to how these matters are to be handled in advance. A family meeting to discuss these plans is a wonderful opportunity to reassure the children of an earlier marriage that the new stepparent will be provided for while their interests will still be respected. An estate planning attorney can often help arrange and conduct such a meeting.

These are not the only questions that can come up when marriage later in life is considered, and often the questions vary.



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Addressing these questions in advance of the marriage, however, is a good way to ensure that the new relationship will be smooth. Considering these questions with a lawyer can help bring up matters that the couple might never have thought of in advance, and which might have caused some disagreements after the marriage.

DON'T RESIST LEGAL AND FINANCIAL PLANNING

Legal and financial planning for a second marriage are often resisted for a number of reasons:

- "It takes the bloom off of the rose."
- "I don't know how to bring up the topic."
- "My fiancée will be offended if I try to talk about money."
- "I have complete trust in my future spouse."

These are all good reasons, actually, to raise the topic. Discussing these matters prior to marriage will enormously reduce the risk of arguments afterwards when the expectations you had turn out differently. There should be no challenge to the romance by raising these questions if both parties are mature and caring.

Elder law attorneys are particularly skilled in the areas of later-in-life estate planning and later-in-life marriages. The issues facing the over-50 crowd are different from those of younger generations, and the lawyers in this specialty field are familiar with the questions to ask and how to deal with complex family dynamics. ■