

Later In Life Marriages Can Be Tricky Legally

Remarriage among the elderly is becoming increasingly more common. If you have a single elderly parent, the odds are high that your parent will find a significant other. Sometimes the relationship comes after a period of grief following a long first marriage or after a devastating divorce. Such relationships can be a source of comfort and security as the couple ages together.

In some cases the couple will decide to remarry and in others they decide to maintain long-term committed relationships. In both instances, the new arrangement adds another dimension of legal issues that should be addressed. If the couple decides not to marry, but live together they need to be aware of the elements of a common law marriage and how they may apply to their arrangement.

Just as in any marriage, the couple must decide how the new relationship and household will be supported financially. Frank discussions about income and assets, or the lack thereof, must be had. Decisions regarding how money will be spent prior to marriage will reduce familial disputes and later difficulties, especially decisions regarding financing long term care. In addition, each partner will need to understand how living in a home previously owned by the other creates a homestead occupancy right in Texas for the non-owner spouse to live in the house for life.

Wills and trusts should be updated to reflect the intent of each potential spouse's wishes. The exertion of pressure to benefit one's own primary family, especially when there is an imbalance of wealth, is a fore-warned danger. Premarital agreements should be considered to keep assets separate and avoid assets commingling. Such agreements help when the marriage inevitably dissolves by death or divorce.

However, premarital agreements are not as effective when it comes to determining how to finance long term care. The assets and income of both spouses, regardless of a well-crafted pre-marital agreement, are considered in determining eligibility for means-tested governmental benefits. Long term care policies for both spouses alleviate this issue, although it is rare that both spouses have the good health and financial means to put these in place.

In addition, decisions regarding handling incapacity of one spouse or both should be made. Powers of attorney, both medical and financial, should be reviewed to make sure that the appropriate decision-makers are able to step in when the time comes. Talking about heavy topics such as decisions involving life support, handling end of life issues and the disposition of remains beforehand avoids complications and family discord later. These issues can be addressed with legal documents such as living wills, pre-arranged funeral and cremation plans and the appointment of an agent to control the disposition of remains.

There are definitely risks involved in entering a later in life marriage. Along with the risks involved with financing long term care, one should also consider potential income and estate tax issues, possible loss of pension or alimony, and the costs involved in taking on a new spouse's debt. It is not an endeavor to be taken lightly or to enter into blindly. However, with proper planning and counsel many of the risks involved can be addressed and dealt with in the best way possible.

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