



Elder Law Guys: The new senior “significant other”

July 25, 2016 12:00 AM

Planning ahead is already complicated enough when the traditional model of a single, life-long marriage with children from the same parents exists. However, as people are living longer, inevitably “senior singles” are on the rise.

Unlike previous generations, today’s senior may remarry or have a formal relationship with someone for many years after the departure — by death or divorce — of the original spouse. This presents some interesting issues (besides whose dog gets to sleep on the bed) for both the seniors in a relationship as well as their respective adult children.

We have often confronted situations in our practice where parents and adult children want to state the intentions of the respective partners in their estate plans. This is frequently a delicate discussion.

On one hand, the adult children are usually happy that their parent has found a companion later in life to fill the void of a lost loved one. On the other hand (there is always an “other” hand), some are curious as to the financial repercussions, both short and long term, of the new “union,” whether legal or by arrangement.

So, here are some tips to consider when struck by cupid’s arrow (which is still sharp) after signing up for Medicare:

1. Have you had the discussion with your new mate about finances in general?

Which house will we live in? Who pays the rent on the apartment? Are food, utilities, travel, automobile expenses, etc., considered? Should you establish a common fund via joint bank account with monthly deposits being made by each partner or keep all finances separate?

2. If there is going to be a formal re-marriage, has a pre-nuptial agreement been considered?

Listen: the first time around it was taboo to speak of such things in our 20s before walking down the aisle. But, now we might actually have accumulated some hard-earned assets versus when we were “kids.”

And let’s face it; the divorce rate for first marriages is already on the rise, and second and third marriages have an even worse track record.

At this stage of the game, both spouses should be mature enough to have the discussion about “what’s yours is yours, and what’s mine is negotiable, etc.”

In our elder law practice, nothing is worse than dealing with crisis. OK, maybe dealing with crisis involving the “outlaws” who want to manage both parents’ lives is worse.

We encourage clients to discuss who will make legal and healthcare decisions for them when they have a new significant other and still want to involve their adult children. Without a written plan and specific power of attorney documents (both financial and for healthcare decision making), the result can be uncertain at best and disastrous.

4. How about the disposition of each person’s assets through a Last Will and Testament or a Trust? Should the new partner have the right to live in the home for the rest of her/his life? What happens then? Who pays for the maintenance and taxes on Mom’s home when her second husband lives there for another 10 years after her death?

While many people have the best of intentions, the law may have a different set of rules to abide by in these situations. What if a new spouse quits a lucrative career and sacrifices significant future pension opportunities to pursue a life with a new partner? How can he/she be compensated for lost future finances?

Is it possible to provide for a second spouse through an individual retirement account without completely cutting off the adult children from the first marriage (or significantly limiting their ability to continue to stretch tax deferral over their longer measuring lives)?

5. Finally, consider the risks of exposure for your new partner’s long term care costs.

Imagine working your entire adult life to amass a reasonable retirement nest egg, only to have to spend it all down on your new spouse’s nursing home costs. This is a subject of great concern for

many of our clients. Getting a divorce in your 80s is about as difficult to discuss as a pre-nup in your 20s.

The key is to discuss the goals of each person before some type of medical event occurs.

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