

Elder law: You're in love again, but consider the legal and financial issues before it's too late

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Congratulations! You've found the one.

After a period of divorce or widowhood, you, your newly beloved and your respective children are about to become a "blended family." You and you partner will be creating a new family dynamic, which will hopefully be rewarding but can be fraught with challenges if little attention is paid to the consequences of the relationships.

For our purposes, a blended family (or stepfamily) is created as a result of two or more people forming a life together (married or not) that includes making that life together with the children from one or both of their previous relationships.

A recent Pew Research Center study showed a high remarriage rate for those 55 and older, with 67 percent between the ages 55 and 64 remarrying.

Part of this high remarriage percentage may be as a result of increasing life expectancies or the death of a spouse. Also, divorces are increasing for older individuals who may have decided that with the kids now being gone, they no longer want to stay with their original spouse.

It should be noted that, while 50 percent of first marriages end in divorce, as many as 67 percent of second marriages and up to 80 percent of third marriages also end in divorce.

Not having common children together can lead to less marital cohesion and, quite often, in our experience, exacerbate or create marital tensions. That said, here are some thoughts that may help mitigate issues that we've seen in our practice.

First, if remarrying, you should really consider starting out with a prenuptial/premarital agreement, which, by the way, is not a dirty word.

Such an agreement is made between two people before marrying that establishes rights to property and support in the event of divorce or death. It causes both parties to put their financial cards on the table for the other to see, especially where each may arrive with different income sources, assets and expenses.

Now, for the harder work: Who gets what and when? Who is going to be responsible for the daily household

bills? Are they going to be paid by one of the parties alone or paid from a common joint fund even if one party has more income than the other?

The same thought processes should be used even if the parties are cohabitating rather than remarrying.

Another Pew Research study showed that almost 4 million adults age 50 and over (4 percent of the total age group 50 and over) were cohabitating, with the numbers having grown by 75 percent since 2007.

Proper legal planning becomes paramount in either the cohabitation or the remarriage scenarios.

For example, do you want the new significant other to manage any assets you may want to leave to your children if you die first? What if your children died before you did? Would you want the new spouse/cohabitor to inherit your property to pass on to that person's children or even a possible subsequent spouse of theirs?

Pay particular attention as to whose name will be on the deed to your residence, which is often the asset with the most value, in addition to the beneficiary designations of your life insurance policies, 401(k)s and individual retirement accounts for much the same reasons.

In this regard, you may want to take a look at our January column on trusts, the use of which could be quite appropriate in the blended family situation. Similarly, special attention should be paid to the agents under your, hopefully revised, health care directives and financial powers of attorney. Do you really want your stepchildren in any of these agent roles, which may include "pulling the plug"?

As a friend of ours who is a widow says: "At some point, it becomes a business decision with much riding on the terms and conditions of the relationship."

Finally, don't forget to determine who will have the upper hand, if called upon, in deciding how your residence is going to be decorated.

This could, in some cases, be a real deal-breaker, depending upon the tastes of each party. A small thing, perhaps. However, you'll be living with it on a daily basis especially if there's a Clash of Tastes! Don't wince when the decorating expense checks start flowing.

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