

Elder Law Guys: Into the Breach; Getting Married Again?

Julian Gray and Frank Petrich Mar 1, 2022 12:15 PM

While today's topic is directed more for older individuals contemplating marriage, — especially ones who may have been previously married — a number of our comments will be as equally relevant for those who are younger.

To steal a quote from the Old Bard, William Shakespeare: “But love is blind, and lovers cannot see the pretty follies that themselves commit.”

Here are a couple of scenarios (and, possible instances) to which this quote might apply: those who have never been married, those who have been divorced, those who are separated, those who may have been widowed and those who are co-habiting.

According to a 2021 Census Bureau report, among adults 20 and over who have been married, 34% of women and 33% of men had also been divorced. The percentage of those divorced was highest (about 43%) for adults of both sexes ages 55 to 64.

Among the group of those who had ever been married, 14% of women had been widowed at some point, compared with 6% of men. That number rises among people 75 years and over, with 58% of women and 28% of men having been widowed at some point.

Generally, for older adults remarrying, as one of us recently did, as a widower, to one who was a widow, the now adult children from the prior marriage have a different role. In first marriages, the emotional/nurturing needs of younger children can help solidify marriages.

However, the respective children of each of the newly remarrieds can become a weak link in an otherwise strong marriage chain — for many reasons — if certain issues are not adequately addressed. Most likely this will involve the issues surrounding parental finances, especially potential inheritances.

So, where should one begin in the contemplation of a remarriage? Based upon both personal and our clients' experiences, we would offer the following thoughts. Begin at the beginning. A full and frank discussion of finances is in order.

This is particularly important where one of the parties to the new marriage has the bulk of the income and assets. How are they to be used in the payment of household expenses? Who should bear the greater share of these costs or are they to be shared equally even though the incomes vary, perhaps significantly?

Whose house will be the one in which you live? How will it be owned/titled? Will you keep individual bank accounts with a separate joint bank account for those shared expenses to which you both agree, such as household expenses like rent, mortgage, utilities, property taxes, etc.?

Who will make financial and healthcare decisions for you? Your new spouse or your children or a combination of both? Do you want your step-daughter to be the one pulling the plug on you? Are you willing to have this level of discussion with both sets of kids to help minimize potential conflict

when a crisis arises (they always do; just be prepared in advance).

Let's go one step further in this regard.

Who's going to inherit on the death of one of the remarrieds? Will this be the surviving spouse? If so, where will those inherited monies go on the second-to-die's death? To her/his children, cutting out the children of the first-to-die's own progeny?

Again, it is often the children in a family who are the tie that binds the family together. This is a lot less so in a second and especially third marriage as they often become the element that frays the marriage, especially where money is concerned. Note also that each of the adult children may have a spouse who may become the evil step-daughter/son in-law with no real ties to the one who dies.

So, a couple of thoughts; get all your estate planning documents up-to-date as soon as the marriage occurs and definitely with agreement beforehand as to these issues.

Better yet, get thee a pre-nuptial agreement to protect the interest of each of you and the respective children of each. A pre-nup in time can save much contentiousness down the road. And for Pete's sake, don't do this by yourself. Get competent legal advice for each of you.

Remember, especially as to second and subsequent marriages, you are in effect, and not necessarily romantically, running a business. Do it with good advice, thought and a business like attitude (Sorry to take this approach so close to Valentine's Day, but ...)

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