

Estate Planning for the Sunset Marriage

By: Kenneth M. Bloom, Esq.

There may be no greater embodiment of the sentiment of love than the union of two people in marriage. For some, it may have taken a few false starts in order to find that perfect someone. For others, that someone may have died far too soon, but a new love has come to fill the void. It's easy for couples to throw caution to the wind when they are young, relatively penniless, and looking to build a life together. However, getting married becomes more complicated when it occurs later in life after each person has achieved their own levels of wealth and may have children from a previous marriage to consider.

Estate Planning Considerations Before Marriage

When entering a marriage with different amounts of savings, it's important to have a *prenuptial agreement*. It will help to ensure fairness, will provide mutually agreed upon terms for which property will be distributed upon divorce and/or death.

A new *will* should be drawn that takes into consideration how you wish to provide for your new spouse and your children from a prior marriage, if any.

Execute a *living trust*, which holds title to your assets but still allows you to manage them. The trust will also provide for the distribution of those assets upon your death.

A *durable power of attorney for healthcare* decisions should be executed. This is an agent that will make decisions on your behalf in the event you become incapacitated.

A *durable power of attorney for financial/property* decisions should also be appointed. Your agent will have the authority to make decisions on your behalf in the event you become incapacitated regarding the management of your assets instead of your healthcare.

Estate Planning Pitfalls When Getting Married

Don't put assets in joint tenancy with your new spouse if you intend to leave those assets to children from a prior marriage, upon the death of the new spouse. Assets held in joint tenancy with your new spouse will pass automatically to your spouse upon your death.

Don't rely on oral agreements that your new spouse will 'do the right thing' and take care of your children from a previous marriage after you become disabled or die. Place them in trust for your spouse, with a mandatory payment of income for life, with perhaps, payments of principal in the discretion of the trustee. The payments of principal, if any, can be tied to a very narrow standard, such as for "emergency financial or medical need" or very broad standard such as for "best interests and welfare and luxuries".

Don't name your new spouse as sole executor or trustee of your estate. It is recommended that a disinterested party, such as a close friend or colleague, or even better, a bank or trust company, be appointed as sole executor or trustee or appointed as a co-executor or co-trustee with your new

spouse.

Don't name your new spouse as the primary beneficiary of all your life insurance policies and retirement plans/IRAs if you intend for these assets to pass to your children from the first marriage upon the death of your new spouse. Doing so will completely disinherit your children from these policies and accounts.

A marriage can be the perfect event to enrich the best years of your life. It should be a time to celebrate each other and each other's lives. By following these considerations you can rest assured that your estate plan is healthy and your future with your new spouse is bright.



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