

Late-in-Life Marriage
Means Revising Your Estate Plans

Honey, I love you but ...

Hope springs eternal! Were we meant to traverse this landscape alone? Maybe, but maybe not. As the average life expectancy in the United States reaches 78 years, people are living longer and finding love later in life.

Beating the 50/50 odds predicting that half of all marriages end in divorce is perhaps the best argument for a solid prenuptial agreement. But a trip to the altar is significantly more complicated with adult children, a residence, IRAs, a 401(k), and the bride and groom realizing frailty and failing health. Some couples opt to live together or to redefine their relationship to avoid marriage so as not to address the thorny issues of possibly losing pension benefits, social security, and health care coverage from an earlier marriage.

In a late-in-life marriage, the issue is not just taking care of a new spouse but, in part, protecting oneself from the new spouse's health care expenses and from the adult step-children. Most parents want to leave assets for their own adult children, yet make sure the new spouse has a roof over his or her head. Parents worry about finances but adult children who

have planned for their inheritance also have a particular interest in how Mom and future Step-Dad manage their marriage of finances.

If you want to increase the likelihood of your new marriage lasting, deal with the money card before you tie the knot. Two elements necessary for a valid prenuptial agreement are: (1) full disclosure of each party's assets and liabilities; and (2) both parties must be represented by separate legal counsel.

Last minute and hastily drafted prenuptial agreements may be vulnerable to attack in divorce, so to avoid the appearance of coercion planning well in advance is advisable. A relationship that can withstand a frank head-on discussion of finances that is embodied in the terms of a prenuptial agreement will be a marriage that has already faced some of its biggest challenges before heading to the altar.

Premarital assets: A couple can identify assets acquired before the marriage in a prenup and agree to keep those assets separate. It may be wise for each spouse to have their own revocable living trust which holds the assets acquired before the marriage and clearly state the disposition of those assets at death.

A prenuptial agreement should be used in conjunction with other estate planning tools as well. Consider who should make your health care decisions in a late-in-life marriage --- your

spouse or your children. Will a new elderly spouse be able to provide care for you? It all depends on your particular situation.

Will the couple live in a house owned in one of their names? What happens if the house-owning spouse dies first? A prenuptial agreement can address these issues and spell out exactly what will happen. This provides peace of mind and removes unwanted surprises. In such a situation, some couples agree for a surviving spouse to move out of the residence in a short period of time after the death of the first spouse, and others may agree for the surviving spouse to live out his or her lifetime there with provisions addressing maintenance, repairs, insurance, and real estate taxes.

Marital assets: You will want to discuss how to deal with assets acquired during the marriage that were jointly purchased. What happens if there is no prenup? Illinois provides that without a prenuptial agreement, a surviving spouse is entitled to minimally one-third of the estate of a deceased spouse. Distribution of this "elective share" can be enforced by the surviving spouse if less than one-third of the estate passes to the surviving spouse in a will or otherwise.

Romantic? Yes --- peace of mind is a joy! A prenuptial agreement in conjunction with estate planning tools like wills

or trusts forces the fearful financial unknowns out of the closet providing a road map for couples and their families.

Nancy R. Larson is an attorney with Harter, Larson & Dodd LLC
with offices in Belleville and Mascoutah.

The firm has an emphasis on intergenerational planning for estates
and concerns of elders and their families.

This article is for information only and is not to serve as legal advice.