

Viewpoint: To marry or not to marry after retirement

■ Sarah Escolas, Esq.

Couples between the ages of 55 and 75 have the highest divorce rate in the United States according to the 2021 U.S. Census Bureau Report. With divorce rates increasing later in life and life expectancies extending into the mid-eighties, relationship and estate planning during this phase of life have become ever more important. People divorcing later in life realize that they have many



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years of happiness ahead of them and are remarrying at increasing rates. By having a proper estate plan in place, these new couples can ensure that their assets are preserved as they wish and, perhaps most importantly, can reduce conflict between family members.

The number one question I hear is, "At this stage of life, how do I move forward with my new relationship but also protect what I have earned and accomplished?" There is a lot to consider, without proper planning, remarriage could impact social security benefits, tax

liabilities, healthcare costs, spousal support, a widowed spouse's entitlement to pension or healthcare benefits from their deceased spouse, financial aid for a child in college, inheritance rights and decision making about an incapacitated spouse's healthcare, finances and end of life planning.

For couples who choose to remarry, or who have already married but want to protect their assets and their children's rights to inheritance, a prenuptial (made before marriage) or postnuptial (made following the marriage) agreement can provide invaluable safeguards. Both agreements establish the terms upon which the parties will separate and/or share their assets, income, and liabilities upon a divorce or separation and their estate when a spouse passes away.

In addition to prenuptial and postnuptial agreements, these couples must also ensure that they have a thoughtful estate plan in place. Such a plan will reduce confusion and conflict following a death or incapacity, by ensuring that the individual's intentions are clear — who will make medical decisions, who will handle the day-to-day affairs, how will assets be

divided. An estate plan will take the guesswork out of who should have the authority to make decisions and will ease stress and anxiety in what is always a difficult time. In order for couples to protect themselves, their relationship with each other, and the rights of their children, estate planning is a necessity to avoid common scenarios like the fictional ones below.

John & Mary

John and Mary have lived together for 20 years. They decided not to get married as Mary is a widow and she would lose her deceased husband's pension and health insurance benefits if they married. Most people believe John and Mary are married. John purchased the house they have lived in before they met. He intended to add Mary to the deed but never got around to it. Mary always got along well with John's son, Fred. After John was diagnosed with dementia, the relationship between Mary and Fred deteriorated. Fred seemed more concerned about saving money for his future inheritance than he did about honoring John's wishes to be cared for at home, rather than at an assist-

ed living facility or nursing home. Prior to John's death, both he and Mary stopped speaking with Fred. John passed away without a will or a trust, which left Mary with no interest in John's estate. Fred refused to allow Mary to stay in her home and informed Mary that he was selling the house. He also told her she has no rights to any of John's personal property. Now Mary is 86 years old, grieving the loss of John and has to find another place to live.

Tony & Pam

Tony and Pam have been married for 31 years. They have lived together in Tony's house for their whole marriage. Pam contributed towards the expenses of the house throughout their marriage but recently stopped due to having to go on disability after being injured. Tony and Pam have an adult daughter together and Tony has an adult son from a previous relationship and they recently reunited. Tony passed away suddenly after a heart attack. Since Tony did not have a will, his estate will be divided between Pam and Tony's children. Pam and Tony's daughter agreed to waive her rights to Tony's estate, but Tony's son refused to waive his rights. Pam can't afford to buy Tony's son out of their house, so she is forced to sell her home and split the proceeds from the sale with him.

Dillon & Mark

Dillon and Mark were remarried later in life. Mark has been diagnosed with early onset dementia. Mark has children from a prior relationship, Dillon and Mark's children disagree as to who should have authority to make decisions regarding Mark's finances and his health. Mark never had a power of attorney or health care proxy prepared. Two of Mark's children filed a petition for guardianship to obtain the right to make financial and medical decisions on Mark's behalf. Dillon filed a petition for guardianship as well, with the support of Mark's other two children. Filing for guardianship cost everyone involved thousands of dollars. It also led to a breakdown in the relationship between the children. The stress of this process caused a rift between the siblings and Dillon and as a result, Mark's final days were stressful instead of comforting.

Had Mark, Tony and John met with an estate planning attorney, they could have easily ensured that their assets were distributed, and their family members were protected as they had intended.

Discussing the end of life is overwhelming but neglecting this essential planning will result in chaos, uncertainty and greater expense for your loved ones once you are gone. Although sometimes difficult to discuss initially, estate plans and prenuptial or post-

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nuptial agreements can alleviate more difficult conversations in the future. I see this in my practice every day; after we have crafted a plan, my client and their family members feel at ease knowing what will happen. Being proactive in ensuring that your affairs are in order is the greatest gift that you can give your loved ones.

Sarah N. Escolas, Esq., is a Partner of Wesley, Clark and Peshkin, LLP, with over 10 years of experience in Estate Planning and Family Law matters.