

Prenuptial Contracts Between Seniors

By James L. Melchers

It is a wonderful thing to see senior widows and widowers find happiness once again. However, the marriage of seniors presents a different set of issues than the marriage of young people. Seniors generally have adult children from their previous marriages, and they wish to maintain separate ownership of their assets to preserve the inheritance for their own children should they be the one to die first. It is not their desire that the new spouse's children get what is left of their estate. Preservation of the inheritance can usually be accomplished through the use of a prenuptial agreement and a well written will.

An additional twist to senior prenuptial contracts is that each partner usually owns their own house, yet they wish to live in and maintain only one residence, the matrimonial home. Therefore, the underlying issue involves the rights of the individual who sells his or her personal residence and moves into the matrimonial residence owned by the other individual. What happens if the owner partner dies first? Where will the non-owner spouse live? These contracts must address the issue of the surviving spouse's right to remain in the matrimonial residence at the death of the owner individual.

Most contracts will provide that the non-owner individual can remain in the residence for a predetermined period of time or for their lifetime after the death of the owner individual. This is a very personal matter. Some seniors want their spouse to have the right to live in the home for life, but not with a new spouse or their family members. Furthermore, the contract should address the issue of the continued residency of the non-owner individual should the owner begin living in a nursing home, assisted living center or some other type of facility.

The contract should address the issue of the normal upkeep and maintenance of the home which are considered ordinary expenses and the extraordinary expenses such as replacement of the roof or air conditioning heating system. It is much better to have this detailed in a contract so everyone understands their own responsibilities. This applies to the percentage payable by each individual during the marriage and after the death of the owner-individual while the non-owner lives in the house. After the death of the owner spouse, who will pay for major repairs? The owners of the property who are usually the children of the dead spouse or the spouse living in the residence? Ordinary expenses are usually paid by the surviving spouse and extraordinary expenses are generally paid by the heirs of the deceased unless agreed to differently in the contract.

These contracts may also address the effect of a legal separation or divorce between the seniors or of the desire of the owner individual to sell the home during the marriage. The contract may also address the conditions of termination of said right to remain in the home, such as the non-owner spouse voluntarily vacating the premises for a period of time or moving into an extended care facility or nursing home.

The prenuptial contract between seniors will expand as additional issues are identified in the future.

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