

# What You Should Know About Marriage and the Law

## Introduction

If you have plans to marry, it is important to consider the legal changes that come with marriage. The law treats married couples differently from single individuals in many ways. For example, marriage impacts your name, ownership of your property, responsibility for your debts, and your rights of inheritance. This pamphlet explains how your lawyer can help you plan the legal side of marriage to help avoid problems during your married life.

## Marriage License

A marriage license confirms that you have complied with the legal requirements for marriage. When filing your application for a marriage license you will probably be required to submit proof of your age and identity. You will also need to provide a divorce or death certificate if you are divorced or widowed.

Many states impose age requirements and other limitations for marriage licenses. For example, those under the age of 18 will probably need to obtain the consent of their parents or guardians. Your state might not permit your marriage if it is to someone of the same sex or if you are more closely related than first cousins. A few states also require blood tests when applying for a marriage license. Your lawyer can explain the legal requirements for marriage and let you know where to obtain a marriage license, proof of divorce from a former spouse, or death certificate for a deceased spouse.

## Marriage Certificate

After your marriage ceremony, the clergy member or public official who officiated will send your marriage certificate to the registrar of marriages. You should receive a certified copy of your marriage certificate within a few weeks of your wedding. Marriage certificates typically include the names of the couple and the date and place of the wedding. You should decide which last name you want to use before the wedding because you may not be able to change the last name used on your marriage license later.

## Name

Many wives take the last name of their husbands, but you and your spouse may keep your last names, if you wish, or, you can both change your last name at the time of your wedding. For example, some couples prefer to use a name that is a combination of their pre-marriage names.

You should give notice of any name change to government agencies like the Social Security Administration, the Department of Motor Vehicles, and the Registrar of Voters. You should also provide notice of your change in marital status and name to your employer, broker, banker, and insurers. Be sure to sign your name consistently on all documents, forms, and correspondence.

## Expenses

After you marry, you are not responsible for the debts that your new spouse incurred before the marriage. Even outside a community property state, however, you may be responsible for various expenses incurred during the marriage for essential items, such as food, clothing, medical treatment, education, and housing. If you live in a community property state, you may also be responsible for other expenses. Your lawyer can advise how to separate yourself from the debts of your spouse.

In any state you will be responsible for debts that you incur together, such as co-signed loan agreements, mortgages or credit card applications. In a divorce, the marriage debts will be allocated between you and your spouse.

## Property

The laws of most states provide that income and property acquired by either party during the marriage are owned by both spouses. There are exceptions for property that can be traced to things owned before the marriage or to gifts and personal injury awards. In the event of divorce, marriage property is divided between the parties as they or as the court deems fair. Your lawyer can advise whether it is possible for you to modify the rules about property with a marriage contract.

After marriage you may want to consider combining your banking and brokerage accounts. Using combined accounts makes bookkeeping easier and lowers account fees. However, combining your accounts may make it difficult to keep track of how much money each spouse is spending. Ultimately, it is up to each couple to

decide how they want to handle their money.

You may also wish to consider changing your personal accounts to tenants-in-common, joint-tenants, or payable-on-death. You should also review your retirement accounts and employee benefit plans to consider naming each other as beneficiaries. If you purchase a house together you may wish to own it in a form available only to married couples—tenants by the entirety. Your lawyer can advise you about the alternatives available when opening or changing ownership of your accounts and other assets.

### **'Marriage Contract**

You and your spouse may want to consider a marriage contract —also called a prenuptial agreement. A marriage contract modifies your rights to property acquired during marriage and settles financial issues in the event of divorce. Without a marriage contract, your rights and responsibilities will be defined by the laws of the state where you live instead of by your preferences.

Marriage contracts are common in second marriages where couples wish to provide for children of a previous marriage.

Marriage contracts are also used by those with substantially different levels of wealth and those marrying later in life who wish to keep their assets separate. Your lawyer can advise you about the benefits of a marriage contract and help you to prepare an enforceable agreement that is appropriate for your situation.

### **Insurance**

You should consider changes to your insurance coverage. For example, you may need to add your spouse to your automobile policy and may want to make your spouse the beneficiary of your life insurance policy. You may wish to increase your life insurance in accordance with your new responsibilities. Your lawyer can advise you about changes to discuss with your insurance agent.

### **Children**

Both parents have a legal duty to provide support for their children. Your natural child will be legitimate after your marriage even if conceived before your marriage. For your children born prior to marriage, you should be able to obtain a new birth certificate from the registrar of births upon presentation of a certified marriage certificate.

You may be able to adopt your stepchild using an expedited procedure. Your lawyer can advise you about the procedures for adoption and about other issues that may arise, such as support, inheritance, and grandparent visitation.

### **Taxes**

You will be entitled to file a joint income tax return after you marry. A joint tax return might reduce your taxes, but it does make both parties responsible for each others' income taxes. Your lawyer can help you decide whether to file joint or separate returns and advise you about tax-saving strategies.

### **Wills**

It is important to have a will. It allows you, at death, to give your property to those you choose and to appoint a guardian for your children. Dying without a will can be costly and may complicate the transfer of your property to your heirs. For example, your estate may have to pay bond premiums if there is no will dispensing with this requirement. If you die without a will, state law will determine who inherits your estate and estate administration proceedings may delay transfer of property to your heirs.

Even with a will you cannot completely disinherit your spouse, who is usually entitled to a portion of your estate. You should consult your lawyer as soon as practical before marriage to prepare a new will, especially if you have children from a prior marriage. Periodically review your will with your lawyer who can help you make revisions needed due to changes in the family or your financial situation. For example, if one of your children becomes disabled, you may want to make special provisions in your will for lifetime care.

### **Powers of Attorney**

You should consider giving your spouse a power of attorney to make decisions on your behalf for health care and financial matters. The power of attorney can be written so that it only becomes active if you are disabled or unavailable. You can revoke the power at any time while you are mentally competent. Your

lawyer can help you determine whether a power of attorney is advisable and prepare one that contains appropriate provisions for your marital situation.

### **Domestic violence**

Your spouse does not have a right to abuse you or your children. The law protects you against physical, sexual, emotional, and psychological abuse. In addition to the help that is available from the police and nonprofit organizations, you can request that the courts issue a restraining order against the abuser or remove the abuser from the home. Some of these proceedings may remain confidential. Your lawyer can help protect you in the event of domestic violence.

### **Divorce**

While few enter marriage contemplating divorce, it remains a real possibility. Serious financial matters and child custody issues may arise. If necessary, your lawyer can be your advocate in custody matters and divorce proceedings.

### **Conclusion**

Your wedding is a time of joyous celebration for you, your spouse, and your family. However, it also brings many legal changes for you to consider. Your lawyer can explain the legal consequences of marriage and help you avoid unintended results and disputes after your wedding day.

### **Checklist for Newlyweds**

#### 1 Things to do before Marriage

- A. Communicate about risk tolerance for insurance, investments, etc.
- B. Consider tax impact of marriage
- C. Determine appropriateness of marriage contract
- D. Discuss budget, banking, credit cards, outstanding loans, etc.
- E. Obtain marriage license
- F. Review preferences for sexuality, spending, spirituality, working, etc.
- g. Seek counseling on parenting, partnership, etc.
- H. Set goals for home ownership, savings, retirement, etc.

#### **2 Children**

- A. Adoption
- B. Disability
- C. Guardian
- D. Name change

#### **3 Documents**

- A. Birth certificates
- B. Marriage certificate
- C. Marriage contract
- D. Social Security card

#### **4 Designating Beneficiaries**

- A. Bank accounts
- B. Brokerage accounts
- C. Employee benefits
- D. Insurance policies
- E. Retirement accounts

#### **5 Estate Planning**

- A. Gifts
- B. Health care declarations
- C. Powers of attorney
- D. Wills
- E. Trusts

### **6 Insurance**

- A. Beneficiaries
- B. Disability
- C. Health
- D. Life
- E. Long-term care

### **7 Notices**

- A. Banks
- B. Brokers
- C. Employers
- D. Insurers
- E. Internet accounts
- F. Landlord
- G. Professional organizations
- H. Registrar of Voters
- I. Social Security Administration

### **8 Registering Ownership**

- A. Automobiles E. Life insurance
- B. Bank accounts F. Real estate
- C. Brokerage accounts
- D. Business interests  
(partnerships, corporations, etc)

This pamphlet provides general information. Laws develop over time and differ from state to state. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation.

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