Legal Matters®

Family Law
summer 2016

Be careful if you're buying a house with someone before you remarry

A growing number of divorced people are buying a house with a new partner to whom they're not yet married.

In some cases, the couple plan to marry, but as a result of the divorce and other complications, they're not able to arrange wedding bells as quickly as they would like. In other cases, people get into a new, serious relationship, but they've just come from a bad experience and are cautious about re-tying the knot.

Sometimes, a person simply moves into a new partner's house and becomes a co-owner.

In all these situations, there are a lot of legal complexities, and it's wise to talk to a lawyer first.

(By the way, this is good advice for *anyone* buying a house as an unmarried couple, whether or not they're divorced. Did you know that one in four married couples under age 35 bought a home together before they said "I do"?)

Here's a look at some of the issues you should consider:

Should we buy the house as joint owners?

If you're joint owners, you both have an interest in the whole house. If one of you dies, the other becomes the sole owner. By contrast, if you're tenants in common, you each have a percentage interest in the house. You might each have a 50% interest, but you could split it differently – for instance, 60% - 40%. You can sell your percentage interest to someone else, and if you die, you can leave your percentage interest to someone besides the other owner.

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A big advantage of joint ownership is that if you pass away, the house goes to your partner without having to go through probate. But this can also be a disadvantage. For instance, if you have children from a previous marriage, you can't legally leave them an interest in the house – the whole thing will go to your new partner, and your children will get nothing.

What if my partner and I have very different credit scores?

That's a common situation, and if you jointly apply for a mortgage, it can make it harder to

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FAMILY LAW BRIEFS

Father must help pay for daughter's car insurance

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When Tom and Deirdre Fichter divorced, Tom was ordered to pay the amount required by the New Jersey child support guidelines for the couple's daughter Megan.

Years later, Megan turned 16 and began driving. Deirdre went back to court and asked that Tom start contributing extra to cover the cost of adding Megan to her auto insurance policy.

Tom complained that he was already paying the guidelines amount, and it wasn't fair to add an additional expense on top of that.

But a judge sided with Deirdre, and ordered Tom to pay half the cost of the insurance in addition to what he was already paying.

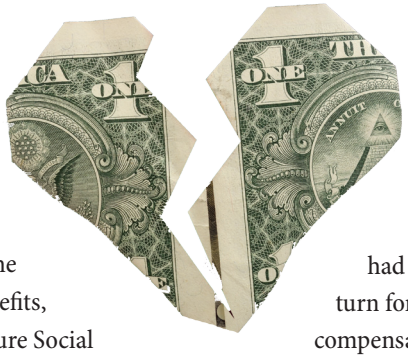
The judge said this was fair, given that insurance is expensive, it's legally required by the state, and the cost wasn't necessarily considered when the guidelines were drawn up.

However, the judge said that once Megan turns 18, Tom could go back to court and ask that Megan herself contribute some fair amount toward the cost of the insurance.

Future Social Security can't be divided in divorce

A divorcing spouse's future Social Security benefits can't be divided at divorce, says the Illinois Supreme Court.

In this case, the husband was participating in a government pension plan in lieu of Social Security, and a judge divided up his future pension payments so that his wife would get a share. The husband responded by arguing that if the judge could split his future pension benefits, the judge should also split the wife's future Social Security benefits.



But the Supreme Court said that pensions and Social Security are different. The husband had a legal right to his vested pension benefits, and a judge could determine their exact value. By contrast, no one has a legal right to future Social Security benefits, because Congress can change the law at any time, reducing the benefits' value or abolishing them altogether.

As a result, the court said, any attempt to place a value on the wife's future Social Security benefits would be merely "hypothetical."

Survivor's benefit may count as a marital asset

When Courtney Carr got divorced, he had a right to a large military pension. He and his wife Beth agreed that he would elect a survivor's benefit. This would give him a smaller pension payout, but if he died first, Beth would begin collecting $2,750/month as his survivor. An expert calculated that the present value of the survivor's benefit was about $226,000.

The divorce judge decided that the couple's assets should be split with 60% going to Beth and 40% going to Courtney (to reflect the fact that Courtney had more income potential). However, in splitting the assets 60% - 40%, the judge didn't count the $226,000 value of the survivor's benefit as an asset.

Courtney complained, saying that not counting the survivor's benefit meant that Beth was getting $226,000 "free" in addition to her 60%.

And the Indiana Court of Appeals agreed with Courtney.

Beth argued that the survivor's benefit wasn't an asset because she might never receive it – if she died before Courtney, she'd get nothing.

But the court said that was true of pensions in general – for instance, Courtney wouldn't get a penny if he died before retirement. And yet pensions are considered assets at divorce.

The court also noted that Courtney had accepted a lower monthly payout in return for the survivor's benefit, so he should be compensated for doing something that benefited his ex-wife.

If you buy a house with someone before you remarry...

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get a loan with favorable terms.

Of course, it's possible to buy a house together, but only put the name of the partner with the better credit history on the mortgage. This can result in a better loan – but it can be a big problem if the couple split up. The partner whose name is not on the mortgage might walk off with an interest in the house but no obligation to pay the debt.

If I already own a house, and my boyfriend or girlfriend moves in, can I just make him or her a co-owner?

Sure, but you should be careful and be aware of all the potential drawbacks.

For instance, you will have just made a very large gift to someone to whom you're not related, and you might end up owing gift tax, or at least having to file a gift tax return.

If you have a mortgage, your mortgage might immediately become due in full if you put someone else's name on the deed. That means you'll have to refinance, and you might not get as good a deal as you currently have.

If your partner runs into financial problems, a creditor could force the sale of your home.

And remember, if you break up with your boyfriend or girlfriend, you won't simply get the other half of the house back. Once you give it away, it belongs to the other person.

Does that mean that I should keep the title to the house myself until we get married?

That's one option. But that can create issues too. For instance, what if something happens to you and you pass away suddenly – do you want your partner to inherit the house? If his or her name isn't on the deed, you might have to revise your will to make that happen.

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If you let your partner live in the house rent-free, the IRS might consider that you've made a gift to your partner of the fair-market value of the rent. If that value is more than $14,000/year, you might have to file a gift tax return.

What's the best way to deal with all these issues?

A good solution is to have a written contract – which you could think of as a "house pre-nup."

The agreement would address how you'll own the property; who contributes how much to start; whether both of you will be on the mortgage; who will contribute how much to the mortgage payments; who will pay for taxes, utilities and maintenance; and so on.

Most importantly, the agreement can say what will happen if you split up – will the house be sold, and how will the proceeds be split? If one partner stays in the house, will that partner buy out the other's share, and how?

Having these things in writing can make the whole process smoother, and protect your legal interests as well.

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Reconciling with an ex might not undo your divorce

When Robert and Jamie Semulka got divorced, Robert agreed to pay Jamie $40,000 in installments. He also agreed to contribute to their children's college education.

Two years after the divorce, the couple moved back in together. They stayed together for nearly a year before once again separating.

After the second separation, Robert refused to abide by the divorce agreement. He claimed that the couple's reconciliation had nullified the divorce proceeding, and that by moving back in with him, Jamie had given up her right to enforce the agreement.

But the Pennsylvania Superior Court said, "Not so fast."

In Pennsylvania, a divorce agreement is treated as a contract, the court said – and nothing in the contract said that it would stop being valid if the couple got back together.

Meanwhile, in New Hampshire, a couple got divorced after 24 years of marriage. They reconciled shortly afterward, and asked a court to undo their divorce.

But the New Hampshire Supreme Court said no. It said that while New Hampshire law allows judges to grant divorces, there's nothing in the law that allows them to *undo* divorces.

So while the couple can remarry, they can't simply wipe the divorce off the books.

The law on reconciliation varies from state to state, but these two cases show that sometimes, what's done can't be undone.

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Stepparent could be ordered to pay child support

In a very unusual case, a stepparent has been ordered to pay child support for two stepchildren.

The mother in this case was a lawyer who gave birth to twin boys in 1998. The biological father wasn't a part of the boys' life and never tried to claim custody. The mother married another man in 2005 and moved to Pennsylvania. The mother and the stepfather separated when the twins were 11 years old; they divorced two years later, but they informally shared custody while the divorce was pending.

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When the mother decided to move to California with the children in 2012, the stepfather filed an emergency lawsuit asking for custody and an order preventing the mother from relocating. He argued that he stood "in loco parentis" (in the place of a parent) regarding the children. A judge sided with him, and ordered that the couple have shared legal custody.

The mother responded by filing a claim for child support. But the stepfather fought it – arguing that he couldn't be made to pay child support because he wasn't the boys' father.

The case went to the Pennsylvania Supreme Court, which ruled that the stepfather could indeed be ordered to pay child support.

This is a very unusual case – ordinarily, a stepparent doesn't have to pay child support even if he or she has developed a very close bond of love and affection with the children. But here, the stepparent had gone a step further – he had filed a lawsuit seeking to acquire all the legal rights of fatherhood. In such a case, the court said, it was fair that he should be saddled with the responsibilities of fatherhood as well.