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Couples Can Limit Conflict the Second Time Around

Although marriages only have a 50/50 chance of succeeding in California, statistically, second marriages have better odds of lasting than first marriages because couples have learned from previous mistakes. But, as attorney Kira S. Vincze tells us, second marriages can also pose unique estate-planning challenges because couples entering a second marriage generally bring their own individual property, savings and investment and retirement plans into the union.

Vincze knows all the ins and outs of this area of law as the chair of the trust and estates department at Michelman & Robinson, a highly regarded firm based in Encino. She says that tricky estate challenges raised by second marriages can be minimized or completely avoided by preparing a plan prior to marriage.

Before embarking on a second trip down the aisle, each person should make a list of his or her separate property assets and seek legal advice regarding what will happen to those assets upon marriage and potentially how to protect those assets throughout the marriage, including at death.

Although this may sound daunting, a well-crafted estate plan can dramatically reduce misunderstandings during a marriage, or upon divorce or death. Most couples who do not seek legal advice before their second union ultimately expose their separate property assets to community property distribution principles in a divorce by co-mingling them (putting their separate assets

into both spouses' names).

California is a community property state. Making uninformed decisions with your separate property while married can wreak havoc on the property intentions of each spouse in the event of death or divorce. Couples considering second marriage have several options to protect their separate property assets. One is a pre-nuptial or post-nuptial agreement. In general, the focus of such agreements is to agree upon what will happen to separate property assets if there is a divorce, or to "opt out" of community property law by creating a binding agreement that will be enforceable in the event of a divorce. In a divorce, this type of planning can have positive results that reduce much of the cost, the tension and the myriad of difficulties experienced when dividing assets.

The greatest advantage of entering into a pre-nuptial agreement or post-nuptial agreement is that it allows the couple to unequivocally state that their earnings after marriage will be kept separate, determine a starting point for the values of their separate property interests, and decide what will be considered their community property, if any.

Another option is a separate property trust. This is a simple way for you to keep separate property assets in trust for a spouse in the event of death or divorce, or in trust for children from a prior marriage with interest being paid to the surviving spouse, but ultimately passing those assets along to your family after your spouse dies, or even if your spouse remarries.

A separate property trust can help maintain the assets' status of separate property in the event of a divorce, and can even provide that the separate property assets pass directly to your family and bypass your spouse entirely.

You can draft your separate property plan in whatever manner you wish and because you use a revocable trust to do so, you can amend and revise these provisions as you head toward a long-term marriage when you want to provide for your spouse. Alternatively, when a marriage ends, these assets will have been kept separate successfully.

If you do not decide to do a trust or any agreement, there are several steps you can take to maintain separate property:

1. Do not add a spouse to the title of the property.
2. Do not use community property assets to maintain or pay mortgages on the assets.
3. Use separate property funds to pay mortgages, improvements, expenses, etc.
4. If you have a separate stock account, do not add your spouse's name to the account, etc. Of course, this is easier said than done.

Legally, keeping separate property separate is an attainable goal. Whether you use a pre-nuptial agreement or separate trusts, it is important to learn how community property rules work, how to keep separate property, and how creating an estate plan that considers both while still accomplishing your varied goals can potentially promote peace in even the most diverse family.