



PO Box 499
Finksburg, Maryland 21048

Phone: (443) 352-8517
Fax: (443) 451-3345
Web: www.proylaw.com

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Thinking of Living Together Before Marriage? Don't Forget These!

First, let me start by saying that I do not have a problem with couples living together before marriage. Many couples are now living together before they get married.

However, living together before marriage poses legal problems that many individuals are unaware of. I would like to emphasize "before marriage." If you are merely cohabitating with no plans to get married, then this article will not be of much help to you.

The crux of this article is about asset protection and estate planning. Asset protection legally protects your assets in the event of a lawsuit. While it is not bulletproof, asset protection measures can be invaluable. However, the most common form of asset protection, titling property as *tenants by the entirety*, is available only to married couples who acquired the property while they were married. What many newly married couples are unaware of is that they need to acquire the property while they are married, not beforehand. In some states, property (and financial accounts) can be re-titled to avail couples to these legal benefits.

#1 Living in a House Together

The purchase of a home has very significant legal implications. First of all, someone is obliged to pay the mortgage. More importantly, however, married couples are able to take advantage of legal methods of asset protection that are only afforded to legally married couples, and it requires re-titling the house if it was acquired before the marriage.

This asset protection is one of the most forgotten things of newly married couples who cohabitated before marriage. There are many reasons for this, such as (1) wedding and honeymoon celebrations, (2) lack of knowledge of the asset protection and (3) pure forgetfulness. If a newly married couple lived together before marriage, they should definitely look into how the house is titled to avail themselves to benefits they are entitled to by law.

Re-titling your house as *tenants by the entirety* will not only help protect your assets in the event of a lawsuit, but it will also make your estate planning much easier because assets passing by operation of law are generally handled outside of the probate process.

#2 Sharing Financial Accounts

Just as with a house, financial accounts can also be availed to benefit from asset protection measures. "Financial accounts" include non-tax-advantaged stock brokerage accounts and bank/checking accounts. Accounts such as Individual Retirement Accounts (IRAs) and 401(k)s should not be re-titled, else they may lose their tax-advantaged status.

After a couple gets married, it would be prudent to review how their financial accounts are titled and consider re-titling the accounts if the situation warrants it.

This is one of the reasons I am against do-it-yourself law because there are many more considerations that must be accounted for.

#3 Estate Planning Documents

It is estimated that about half of the American adult population does not have any estate planning in place. Estate planning documents include wills, powers of attorney, living wills and possibly trusts. If you had estate planning documents before you were married, they need to be updated. If you did not have any estate planning in place, then you and your spouse should seriously consider starting now!

This is the only paragraph where I will mention the pitfalls of do-it-yourself law. There are many considerations that one must account for when planning an estate such as tax implications, legal requirements and proper document execution. Premade forms, software and various internet resources are not the best place to turn to because what you see is what you get, there is no customization. Now think about your five closest friends – are their life circumstances exactly the same as yours to warrant using the same estate plans?

Life-changing events require updating your estate planning documents. Generally, (1) marriage, (2) death, (3) divorce and (4) birth, at a minimum, require updating your estate plan. Many people are under the mistaken impression that wills and trusts are only for handling wealth, which is incorrect. Wills also have the very important task of delegating a guardian for minor children (a trust cannot appoint a guardian, so even if you have a trust, you still need a will).

DISCLAIMER: This article is being provided for informational purposes only. You should consult with an attorney before re-titling any of your assets. Not all states recognize *tenancy by the entirety*.

About the Author:

Nicholas Proy is an attorney licensed to practice law in Maryland and Pennsylvania. His law firm, the Proy Law Firm, focuses on estate administration and probate, wills, trusts and estate planning, and small business and corporate law.

For more information, visit: www.proylaw.com.

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