

# What We Know

## ARTICLES & INSIGHTS

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## Considerations When Planning to Remarry

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If you are planning a second marriage, there are precautions you may want to consider to protect your assets or ensure the interests of your children from a previous marriage.

### **Protect your Assets**

There are two types of assets you may want to protect: marital and non-marital. Assets acquired during the marriage, whether in your name or your spouse's name, are considered marital assets. Assets acquired before the second marriage or those acquired by inheritance or gift during the marriage are non-marital assets. Non-marital assets are not distributed in the event of a divorce as long as there is sufficient proof the assets are indeed non-marital, and the assets have not been merged with or into marital assets.

To protect your non-marital assets in the event of divorce, here are a few precautionary steps to consider:

- **Keep your non-marital assets separate from your marital assets.** Many people getting married for the second time are more financially established than before their first marriage. Keep the money you bring into the second marriage in a bank account separate from the money acquired during the second marriage. If any money acquired during your second marriage is mixed in with funds acquired before the marriage, it will be difficult to establish that such funds are non-marital assets in the event of divorce.
- **Do not use non-marital funds during your second marriage.** The use of non-marital funds during your second marriage blurs the nature of such funds. If you are using the funds to support any aspect of the second marriage, it could be argued that the funds are a marital asset. One exception to this rule is using non-marital funds for the upkeep or preservation of non-marital assets.
- **Keep non-marital assets titled in your name.** Although many couples remarrying consider re-titling a house or car jointly with a new spouse, changing a title to both names will result in the asset being considered marital property. The asset will then be subject to distribution in the event of divorce.

Another precautionary step to protect marital assets in the event of divorce is having

your attorney draft a prenuptial agreement. A prenuptial agreement allows you and your future spouse to agree on how assets acquired before and during your marriage will be distributed in the event of a divorce. A prenuptial agreement can also address the allocation of alimony or other support, and may allow couples to make a thoughtful decision regarding how property will be divided without the emotional stress and conflict present during divorce.

A prenuptial agreement may also allow you to address the interests of your children from your first marriage. Many people entering into a second marriage have children from a previous marriage and will want to plan for how the second marriage will affect the financial interests of those children. Your prenuptial agreement can protect certain assets for your children such as real property or monetary funds.

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