

Just wed? Cash in on this advice

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My Sunday column looked at the tax aspects of getting hitched. Today I'll cover some things newlyweds should know about merging their assets, such as the importance of creating a will, the best way to title assets, keeping premarrriage property separate and what to do if your spouse has a debt problem.

It's not romantic, but it's definitely more important than figuring out where you're going to store three sets of china.

All newlyweds should consider seeing a lawyer, especially if they have significant assets or children from a previous marriage, or are in a same-sex union.

The information that follows applies to heterosexual couples in California. Some rules are different in other states. Although California recognizes registered domestic partnerships, federal law does not, creating conflicts too complex for this column.

-- Who owns what: In California, anything a spouse brings to a marriage is considered separate property, along with any growth or income from those assets.

Any income or asset acquired during marriage is considered community property except for gifts and inheritances intended for one spouse, which remains that spouse's separate property.

If a couple divorce, each spouse gets all his or her separate property and half of the community property, unless a prenuptial agreement states otherwise.

Given the high divorce rate, most attorneys advise spouses to keep separate property separate.

You should keep your separate property in an account in your name only and don't commingle it with assets acquired during marriage. If you get a gift or inheritance from your uncle and deposit the check in your joint checking account, it's difficult to disentangle from community property.

Keeping a house separate can be tricky. If you use your earnings during marriage to pay for the mortgage or maintenance, it could lose its separate character.



Max Gutierrez, an estate planner and family lawyer with Morgan Lewis, advises couples to own their home jointly.

"The anchor of a good marriage is having a residence in both names. It gives it a solid base, psychologically anyway," he says.

-- Changing beneficiaries: Most couples will want to name their spouses as beneficiaries of their individual retirement accounts, 401(k) or other retirement accounts and life insurance policies.

Even though retirement accounts are held in one person's name, all contributions made after marriage "are community property because they are associated with your wages," says Sanford Fisch, chief executive of the American Academy of Estate Planning Attorneys.

Federal and state laws require spouses to name each other as beneficiaries of their retirement accounts unless a spouse signs a waiver.

-- How to hold title: Couples have several ways to title assets acquired during marriage: joint tenants with right of survivorship, community property and -- a relatively new option in California -- community property with right of survivorship.

Many lawyers like this third option for young couples.

It gives you the main benefit of joint tenancy: If one spouse dies, the surviving spouse automatically inherits the deceased spouse's half of the asset without it going through probate.

It also gives you the tax benefit as community property: Suppose you buy a house for \$400,000 and it is worth \$1 million when the first spouse dies. The cost basis of the entire home is stepped up to \$1 million. Increasing the basis reduces tax when the asset is sold.

If the home had been held in joint tenancy, only half of the value would be stepped up when the first spouse dies. The new basis would be \$700,000 instead of \$1 million.

Gutierrez generally recommends community property with right of survivorship for couples with few assets and no children. Couples with children and sizable estates should consider placing assets in a trust.

-- Debts: If one spouse has large debts, the couple should consider keeping their assets in a separate account in the name of the credit-worthy spouse. This could provide protection from some creditors, Gutierrez says.

It also can create problems.

"If the people divorce, now you have all these assets listed in one name," Fisch says. The couple "better have a contract" spelling out their intentions.

Spouses should check each other's credit reports and scores -- preferably before saying "I do." If one spouse has a bad score, the couple might want

to keep their credit accounts separate.

"When you get married, there is no combining of credit reports," says Craig Watts, a spokesman for Fair Isaac, developer of the FICO score. "The only time a spouse's credit obligations influence both parties is when they are joint users of an account or one is an authorized user on the other's credit card. To the extent that the joint account is in good standing, it will benefit both parties' credit scores. The opposite is also true. If there is a 30-day late status, it will penalize the score of both participants."

If the couple apply for a loan together, most mortgage and auto lenders "will look at the credit reports of both parties and usually base their decision on the person with poorer credit," he adds.

The spouse with the good credit rating could apply for the loan alone but might not have enough income to qualify. Some lenders will work with such borrowers to find a solution.

-- **Wills:** All couples should have a will to make sure their assets will be distributed according to their wishes upon their death.

If you die without a will in California, your community property will go to your spouse and your separate property will be divided between your spouse and other living relatives according to a state-mandated formula, says Steve Hartnett, associate director of education with the estate planning academy.

If you had a will before marriage, you should rewrite it to include or specifically exclude your spouse, says Gutierrez.

If you don't rewrite your will, it will be partially revoked and your spouse will be entitled to inherit what he or she would have received had you died without a will.

If you have considerable assets, consider having an estate plan.

When you get a will, estate plan or prenuptial agreement, "Ask the attorney to provide you with a summary of what it says in plain English so you that it matches your intent," says Grace Allison, a tax strategist with Northern Trust.

Both spouses also should sign a power of attorney for health care so they can make medical decisions for each other if one becomes incapacitated. If you don't have an attorney, you can find a sample document on the Web, but be sure to get one for your state.

Net Worth runs Tuesdays, Thursdays and Sundays. E-mail Kathleen Pender at kpender@sfgate.com.

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