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The Second Match

Ashlea Ebeling 11.12.07, 12:00 AM ET

Should you remarry or just shack up? Consult your financial adviser and lawyer, as well as your conscience

After her college professor husband of 46 years died, Betty J. Tucker reconnected with retired insurance salesman Tom C. Clark. She'd met him on a blind date when she was 18. Tucker, 77, and Clark, 78, have lived together without benefit of marriage for eight years now, splitting their time between her Dallas home and his Beaumont vacation property. Their finances are separate. When they eat out, they take turns paying.

In 2006, 1.8 million Americans aged 50 and above lived in heterosexual "unmarried-partner households," a 50% increase from 2000, figures Bowling Green State University demographer Susan Brown. Much of that growth is due to the baby boomers passing 50. But it also reflects the problems of blending finances later in life. Ninety percent of older heterosexual live-ins are widowed, separated or divorced.

Get remarried and your future Social Security checks might be smaller. The alimony from your ex, your kids' college financial aid or the survivor's annuity you receive from your late spouse's job might evaporate. "I hate living in sin. But I guess I must hate living in poverty even more," one woman told Stephanie Coontz, who studies contemporary families as a professor at the Evergreen State College in Olympia, Wash. Coontz notes some couples even choose not to marry in order to reassure adult children that they'll get their inheritances. "My children," says Tucker, "despite the fact that they like Tom, don't want any question as to who gets their father's money."

If you are thinking about marriage late in life, get out your calculator, law books and tax software. The Government Accountability Office counts 1,100-plus federal provisions, involving taxes, benefits and so on, where marital status has an effect. Here are some problem areas.

Estate Planning

Even if your will leaves everything to your kids, a second spouse can claim what's known as an "elective share" of your estate--typically a third. (If you don't have a will, [read this story](#)) The easiest way to avoid trouble is with a prenuptial agreement in which your spouse-to-be gives up any claim to a share. After you're married, it takes more lawyering to disinherit a spouse.

Some unmarried couples should take precautions, too. In the jurisdictions that still recognize "common law marriage", a partner could grab an elective share as a common law spouse. Usually, only long-standing heterosexual couples who hold themselves out as married--say, by filing joint tax returns or using the same last name--will be considered to have entered a common law marriage. But head off problems by signing a joint statement that you don't intend to have one.

What if you do want to leave a third or more of your assets to your new partner? Tie the knot. You can leave any

amount to a spouse (who is a U.S. citizen) without having the bequest count against the (currently) \$2-million-per-person exemption from federal estate tax. Similarly, bequests to a spouse don't count against the exemptions (which are usually smaller than \$2 million) in those states that still impose estate taxes. If you've married, you can devote your entire exemption to sheltering from tax what goes to the kids.

In Pictures: Seven Reasons Grandma Should Live in Sin

Alimony and Palimony

If you are receiving alimony from an ex-spouse, it will almost certainly end if you remarry and might even be cut off if you shack up--depending on the state where you divorced and your legal agreement with your ex. If you're in the midst of a divorce and have met someone new, bargain to receive more assets instead of alimony checks, says Sheila Riesel, a matrimonial lawyer with Blank Rome in New York City.

As for palimony, it isn't just for the rich and famous. If you live with someone and pay most of the bills, there's a danger, particularly in California, that if you split up, your ex-partner could win support payments, says Wendy Goffe, an estate lawyer in Seattle. So sign a cohabitation agreement, just as you'd sign a prenuptial agreement, making clear whether palimony will be paid, and if so, how much.

Social Security

At retirement age a widow (or widower, but this is mostly a consideration for women) can claim her late husband's full Social Security retirement benefit if it's higher than the benefit she herself earned and she didn't remarry before the age of 60.

A divorced woman can also claim Social Security based on an ex-husband's earnings, instead of her own, so long as they were married at least ten years and she didn't remarry before 60. If her ex-husband is still alive, she gets a "spousal benefit" equal to 50% of his benefit, which is often less than what she'd receive based on her own earnings. If, however, she didn't remarry before 60 and her ex dies before she reaches her "full retirement age" (66 for those born from 1943 through 1954), she can receive his full retirement benefit, even if he had remarried and his new wife is claiming that benefit, too. If her ex-husband earned a high salary, that's probably more than the benefit she'd get based on her own earnings or by claiming a 50% spousal benefit connected to a new husband.

Survivors' Annuities

Widows and widowers of public employees, including servicemen, police and firemen, can lose an annuity if they remarry. "We see people living together, not remarrying, having children. It helps erode the foundation of marriage," complains Suzanne Sawyer, executive director of Concerns of Police Survivors, a 15,000-family survivors group, which has campaigned, with some limited success, to end remarriage penalties for widows and widowers.

The surviving spouse of a military person killed in Iraq or in other duty receives an inflation-adjusted annuity (\$1,067 a month in 2007, regardless of rank) but loses it if he or she remarries before turning 57. Survivors of federal civil servants with at least 18 months of service receive an annuity equal to 55% of the pension benefit their late spouse had earned or 40% of his average salary, whichever is more, but forfeit it if they remarry before age 55. Survivors who remarry also risk losing health insurance.

College Financial Aid

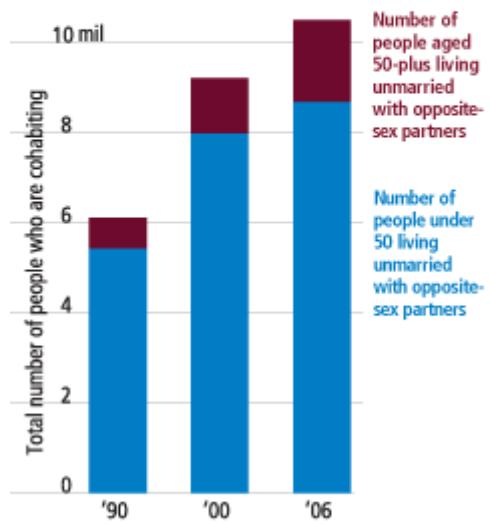
Financial aid is based on the difference between the cost of the college your child attends and the amount (called the "expected family contribution") that colleges feel entitled to gouge out of you. The EFC is calculated one way for federal aid, such as subsidized loans, and another way at some private colleges.

If a widowed or divorced parent with primary custody remarries, the feds count the income and assets of the new spouse towards the EFC. The resources of a noncustodial divorced parent aren't counted. By contrast, private schools don't always count a new spouse's earnings and will often count a noncustodial parent's resources

(including occasionally his or her new spouse's income and assets) in the EFC. Troy Onink, who runs a college-planning company in Russell, Pa., recently counseled a widow who decided to put off remarriage until her daughter graduated, since she would have lost \$14,000 a year in grants. Luckily, the girl didn't go to Sarah Lawrence College, which counts the income and assets of an unmarried partner if the couple has lived together for more than two years and mingled their finances.

Without Benefit Of Marriage

Older heterosexual couples make up the fastest-growing segment of the living-together population in the U.S.



Source: Bowling Green State University's Center for Family & Demographic Research.

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Nursing Home Costs

Only 9% of current 62-year-olds are expected to end up in a nursing home for five years or more and 24% for one year or more. But with nursing home care costing \$100,000 a year in many areas, it's something to think about. Most long-term nursing home residents end up on Medicaid, the state-federal program for the poor. If you marry, your income and assets must be used to pay for your new spouse's care before he can tap Medicaid. The well spouse can keep a house but a maximum of only \$101,640 in other assets and \$30,492 a year in income. "You can't sign away this responsibility in a prenup," warns Bernard A. Krooks, an elder lawyer in New York City who has seen couples live together, rather than marry, because of the fear of nursing home costs.

Suppose you marry and then see signs--say early onset Alzheimer's--that your new spouse may need years of care. Can you give your assets to your kids? Last year Congress tightened up the rules so that any gifts made during the five years before your spouse applies for Medicaid will delay his eligibility; if your spouse would otherwise be eligible now, but you've given the kids \$200,000 in gifts recently, he won't get coverage for another two years or more, raising the question of how you'll pay the bills in the interim.

What about giving away assets before you get married? Krooks says states might challenge such transfers. Whether they can win isn't clear. States have pursued live-ins for support without success.

Income Taxes

If your incomes are very different, you may well reduce your combined tax bill by marrying. But upper-income folks with similar earnings still pay a marriage penalty. For example, the 33% marginal rate kicks in at \$160,850 of taxable income for singles and at \$195,850 for couples. That's not all. Better-off folks are denied lots of tax breaks. Often, a couple loses the goody at less than twice the income level of a single.

Carol Kohfeld, 67, lives with a fellow retired college professor in University City, Mo. She's been using a nifty provision that allows a tax filer to withdraw money from an individual retirement account, declare it as taxable income and then roll it into a Roth IRA, where it can grow tax free, potentially for decades. She hopes to leave the Roth to her kids from her earlier marriage. But the rollover maneuver is allowed only if a taxpayer has \$100,000 or less in modified adjusted gross income (before the withdrawal). It's the same \$100,000 for couples or singles. "If we were married, we'd be over the income threshold," Kohfeld notes.

Even moderate-income retirees have to watch out for marriage gotchas; up to 85% of Social Security benefits become taxable when "provisional income" (that's one-half of Social Security, plus other adjusted gross income and tax-exempt bond interest) exceeds \$34,000 for a single or \$44,000 for a couple.

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Real Estate

Married couples, provided they're both U.S. citizens, can freely transfer property to each other without worrying about gift taxes. That means you can easily make your new spouse a co-owner of your home. Sharing assets with an unmarried partner is trickier. You can give only \$12,000 worth of gifts to another person a year without eating into your \$2 million lifetime estate tax exemption. And if you're adding your unmarried partner to a deed, you might have to pay a transfer tax (waived for spouses).

One solution is to keep property and finances separate. "People in love have this tendency to say what's mine is yours, what's yours is mine," says Kelly Phillips Erb, a Philadelphia lawyer. "That's not always a good idea."

If you're buying a house together and want to make sure your partner can keep it after your death, own it as joint tenants with right of survivorship. When one partner dies, the other gets sole ownership (but may owe estate tax). Another approach is to treat it as you would a business transaction. Roger Nyhus, who runs a public relations firm in Seattle, and his partner Rodney Hearne, a biotech technician, bought a fixer-upper Beaux Arts house for \$1.6 million in September. His lawyer recommended they go into it as business partners, with the percentage ownership based on each partner's pro rata contribution and with a buy-sell agreement that covers a split-up.

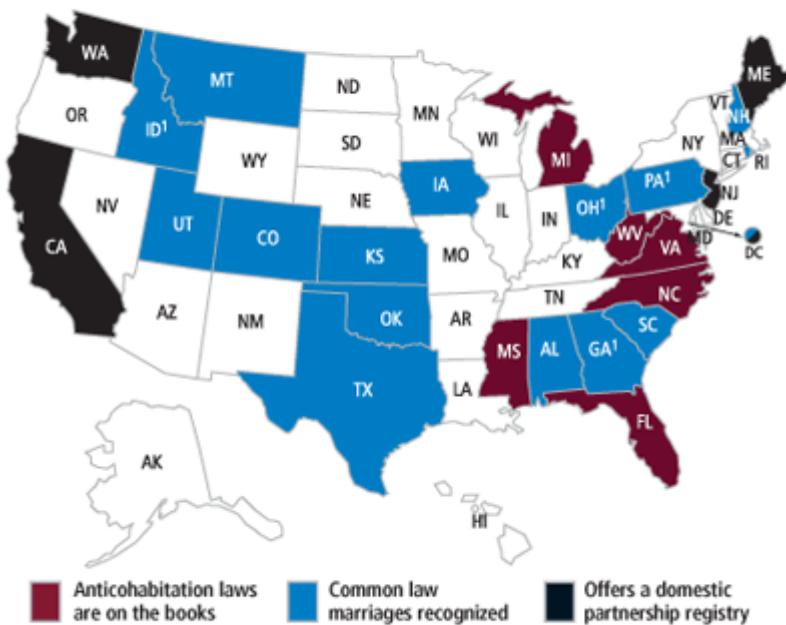
Protection for the Unmarried

Married couples do enjoy a lot of rights and benefits unmarried folks don't. But as gay couples campaign to get some of these rights, unmarried heterosexual couples are gaining a new option, too: domestic partner registries. Washington is the latest state to adopt a registry. A registered couple can make health care decisions for each other and can inherit each other's property if there is no will. These partnerships shouldn't be entered into lightly, warns Jamie Pedersen, a Washington state rep who pushed the registry and signed up for it with his partner, Eric Pedersen, the first day it was open in July. Domestic registry rights are in flux, with fans of fuzzy marriage pushing legislators to add new rights. So if you sign up for one, keep tabs on what it means.

At the other extreme, laws making it a crime to live together as an unmarried couple are still on the books in six states. As a practical matter, you don't have to worry about criminal charges. But there are still situations where officials--or your ex-spouse in a custody battle--might use the law against you. In 2005 a Michigan court of appeals, citing the state's anticohabitation statute, barred a man's live-in girlfriend from their joint home when his kids from his first marriage visited. After the American Civil Liberties Union appealed the decision to the Michigan Supreme Court, the kids' mom, who had fought for the live-in's banishment, relented.

State of the Union

Living with someone? You might be considered a common law spouse, a registered "domestic partner" or a lawbreaker—depending on where the two of you reside.



¹These states only recognize common law marriages created before 1997 (Georgia), before 1996 (Idaho), before 1991 (Ohio), before 2005 (Pennsylvania). Sources: American Civil Liberties Union; Human Rights Campaign's "Living Together: A Legal Guide for Unmarried Couples" (Nolo, 2006).

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