

MARITAL MATTERS

Everyone loves a wedding. It is a festive celebration of two lives joined into one. But after every wedding comes a marriage. It has been said that “a marriage may be made in heaven, but the maintenance must be done on earth.” Just as there will be times of celebration in every marriage, there certainly will be times of challenge, too.



While our human nature would lead us to hope for the best in life, our human experience would have us prepare for the worst. Call it being realistic.

Wedding Vows

This reality is acknowledged when a couple pledges to be loyal to one another “*in sickness and in health.*” Without prior planning, however, disability due to an illness or injury can add unnecessary legal and financial challenges to any marriage. Fortunately, some preventive “maintenance” now could help avoid disaster later. In this article we review some of the most

essential preventive measures to help you honor your wedding vows.

Legal Challenges

Most married couples, whether celebrating their six-month or their sixtieth anniversary, have the mistaken belief that they can make personal, health care and financial decisions for one another, without outside interference, should either spouse become disabled. Nothing could be further from the truth.

Problem: Every adult American citizen is responsible for making his or her own personal, health care and financial decisions. Accordingly, if one spouse is

INSIDE

In this issue of our newsletter, we focus on making proper estate plans to avoid common legal and financial challenges in your marriage. Meeting these challenges will help you honor the vows you made on your wedding day to care for one another.

Fact: Many U.S. citizens marry non-citizen spouses. Problem: Lifetime and post-mortem transfers to a non-citizen spouse can trigger significant gift and estate taxes. The tax rules are complex and proper estate planning requires great care.

legally disabled, then the other spouse will not automatically have access to the disabled spouse’s medical information, bank accounts, retirement plans, etc. In fact, the *healthy* spouse will not be able to file a joint income tax return for the couple.

Consequence: Unless you already have legally appointed your spouse to be your *Agent* to make your decisions in the event of your disability, then decisions regarding your personal, health care and financial affairs will come to a screeching halt! You and your spouse will find yourselves involuntary participants in the

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Lawyer Full-Employment Program of the Probate Court.

First, the non-disabled spouse must hire an attorney to bring a lawsuit declaring the disabled spouse as legally disabled, and ask the Probate Court to give the non-disabled spouse the legal authority to act on behalf of the disabled spouse. Second, the Probate Judge (i.e., lawyer #2) must appoint another lawyer (not in the same law practice as the first lawyer) to represent the disabled spouse against their non-disabled spouse. Eventually, after considerable red tape, expense and disclosure of private matters (i.e., personal, health care and financial), the Probate Judge likely will appoint the non-disabled spouse as the *Guardian* over personal and health care matters, and as *Conservator* over financial matters.

Fortunately, an ounce of prevention is worth a pound of cure when it comes to avoiding the *Lawyer Full-Employment Program*. Bottom line: If you are at least 18 years old, whether married (or single), then you need to appoint your spouse



(or trusted loved ones) to make your personal, health care and financial decisions. These critical legal documents should include Advance Health Directives (e.g., a *Durable Power of Attorney for Health Care Decisions/Health Care Treatment Directive/Health Care Proxy/Living Will*), and a *Durable Power of Attorney for Financial Matters*.

Financial Challenges

During your working years, be sure to maintain *Disability Income Insurance* in case you are unable to work due to an

injury or illness. Many families are forced into bankruptcy when the household income is suddenly insufficient to meet financial obligations.

Then, after your working years, your Disability Income Insurance (i.e., once needed to insure a steady paycheck upon disability) should be replaced by *Long-Term Care Insurance* to pay for long-term care (e.g., nursing home). Without it, many couples are forced to rely on Medicaid to pay for their long-term care once their assets have been depleted to the poverty level.



Ask Yourself ...

These Questions Regarding "Marital Matters."

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|---|-----|----|----------|
| 1. My spouse and I have legally appointed one another to make our personal, health care and financial decisions should either of us become legally incapacitated. | Yes | No | Not Sure |
| 2. My spouse and I understand that failing to legally appoint one another to make such decisions could subject us to the <i>Lawyer Full-Employment Program</i> in the Probate Court. | Yes | No | Not Sure |
| 3. My spouse and I understand that fundamental legal planning to appoint one another to make such decisions includes a <i>Health Care Treatment Directive (or Living Will)/Durable Power of Attorney for Health Care Decisions</i> , and a <i>Durable Power of Attorney for Financial Matters</i> . | Yes | No | Not Sure |
| 4. My spouse and I understand that just as <i>Disability Income Insurance</i> is essential to protect household income during our working years, <i>Long-Term Care Insurance</i> is essential to protect our financial independence after our working years. | Yes | No | Not Sure |
| 5. My spouse and I do not want to be dependent on Medicaid to provide for our Long-Term Care. | Yes | No | Not Sure |

NON-CITIZEN SPOUSES

As a natural consequence of international travel, study and commerce, more U.S. citizens are marrying foreign nationals. These marriages specifically enrich both families and generally enrich the great “melting pot” which is the United States of America. However, without proper planning, such marriages could unnecessarily enrich the IRS!

When a marriage is between U.S. citizens, each spouse may give away during life or pass at death an unlimited amount of assets to the another spouse. This is called, appropriately, the *unlimited marital deduction*. However, the gift and estate tax rules governing transfers from a U.S. citizen spouse to a non-citizen spouse are different. And the failure to comply with these rules can be rather expensive (unless modified by treaty).

Lifetime Giving

A U.S. citizen may give \$136,000 each year to their non-citizen spouse free of gift taxes. Any amount exceeding that protected annual threshold is subject to gift taxes. This rule is clear and easy to understand. The rules for post-mortem transfers, on the other hand, are complex, especially for estates exceeding the applicable estate tax exemption amount (e.g., \$5 million for 2011 and 2012).

Post-Mortem Transfers

General rule: If the estate of a U.S. citizen passing to their non-citizen surviving spouse exceeds the applicable estate tax exemption amount, then the amount in excess will not qualify for the unlimited marital deduction. General exception: If the non-citizen surviving spouse becomes a U.S. citizen before the federal estate tax return is due (within nine months of death), or if the estate passing to the non-citizen spouse is held in a

Qualified Domestic Trust (QDOT), then estate taxes will not be triggered on the excess upon the death of the U.S. citizen spouse. [Note: Up to \$600,000 of the value of the personal residence and its contents may be excluded when determining the level of “red tape” triggered by the size of the estate left to the non-citizen spouse.]

QDOT Requirements

The underlying purpose of the QDOT exception is to ensure the collection of the estate tax upon the death of the non-citizen spouse (who otherwise could remove the assets from the United States and deprive the IRS of its eventual *inheritance*).

The QDOT requirements are set forth in IRC Sec. 2056A(a) and related Treasury Regulations and they include the following:

- At least one trustee of the QDOT must be a U.S. citizen or a domestic corporation.
- While QDOT trust income distributed to a non-citizen spouse is not subject to QDOT



tax, distributions of principal will be subject to federal estate taxes (unless made due to a qualifying hardship).

- The U.S. trustee must be able to withhold taxes due on any trust principal distributions.

Bottom line: The lifetime or post-mortem transfer of wealth to a non-citizen spouse can be an unnecessarily taxing experience. Be sure to seek appropriate legal counsel to limit such experience.

POCKET PROTECTORS

Tips to help you protect your pocket!

Free Cyber Security Resource

Most of us cannot imagine life without a computer these days, to include internet access. Like everything good it seems, the Cyber World has its own dark side. Here is a free government website (actually you underwrite it as a U.S. taxpayer) with a treasure trove of practical, real-time information for safer and more secure computing: www.us-cert.gov. Along with **Cyber Security Tips**, here are just a few resources available:

Technical Cyber Security Alerts

Provides timely information about current security issues, vulnerabilities, and exploits.

Cyber Security Bulletins

Provides weekly summaries of new vulnerabilities.

Cyber Security Alerts

Provides timely information about current security issues, vulnerabilities, and exploits. They outline the steps and actions that non-technical home and corporate computer users can take to protect themselves from attack.

“Life is
half spent
before we know
what it is.”
— George
Herbert

Note: Nothing in this publication is intended or written to be used, and cannot be used by any person for the purpose of avoiding tax penalties regarding any transactions or matters addressed herein. You should always seek advice from independent tax advisors regarding the same. [See IRS Circular 230.]
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Scott N. Alperin
Alperin Law
4605 Pembroke Lake Circle
Suite 300
Virginia Beach, VA 23455

Phone: (757) 490-3500
Fax: (757) 233-3600

scott@alperinlaw.com

Scott N. Alperin **Alperin Law**

Phone: (757) 490-3500 • Web: www.alperinlaw.com

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