

Kiplinger



The Financial Pros and Cons of Getting Married Later in Life

By [Kiplinger](#), March 31, 2015, 12:00:01 AM EDT

Love may be sweeter the second (or third) time around, but for a growing number of baby boomers, love and marriage don't go hand in hand.

The number of adults older than 50 who were living together outside of marriage more than doubled between 2000 and 2010, from 1.2 million to 2.75 million, according to the *Journal of Marriage and Family*. It's not fear of commitment that keeps older couples from making their unions official, financial planners say. Rather, they're afraid marriage will saddle them with higher health care costs, wipe out retirement benefits, raise their taxes and disrupt estate plans.

Despite all that, marriage conveys 1,138 tax breaks, benefits and protections (such as guaranteed medical leave to care for a family member), according to the Human Rights Campaign.

Those prerogatives are among the reasons same-sex couples have sought the legal right to marry, just as some opposite-sex couples are choosing not to tie the knot. If you're contemplating either marriage or just moving in together, put romance aside long enough to consider these issues.

Sharing costs and assets

Living together means either you start fresh in a new place or one of you moves into a partner's home. The latter isn't unusual for older couples, but unmarried couples need to take extra steps to protect their interests. If one partner--say, the woman--isn't on the deed, her property may not be protected by the owner's homeowners insurance, says Russ Weiss, a certified financial planner in Doylestown, Pa.

She may also be ineligible to deduct her share of the mortgage interest on her taxes, says Alan Pinck, an enrolled agent in San Jose, Calif. That's not an issue for married couples who file jointly, even if only one spouse is on the deed, he says. And if the relationship ends and she has to move

out, she has few legal rights, even if she has contributed to the mortgage and other expenses. That's why for older, unmarried couples, making a cohabitation agreement isn't just a good idea, it's a necessity, says Frederick Hertz, a lawyer and coauthor of *Living Together: A Legal Guide for Unmarried Couples* (Nolo). Older partners often own homes and have investment portfolios and other assets; they may also have adult children who aren't thrilled about their parents' living arrangement. If the relationship fizzles or one partner dies, what seemed like an uncomplicated partnership could turn into a messy legal nightmare.

An attorney with experience in counseling unmarried couples can help come up with an agreement that will govern the arrangement and address potential conflicts. For instance, if one member of the couple owns the house, the agreement would spell out whether the nonowner will contribute to the mortgage (if there is one) and other home-related costs. If the nonowner doesn't contribute, the couple might include language that states that he or she isn't obligated to reimburse the heirs for those costs after the owner dies. The agreement can also state that if the owner moves into a nursing home, the partner can remain in the home.

If you and your partner decide to buy a home together, a cohabitation agreement should spell out the amount each will contribute to the cost of buying and owning the home. "Do you want to think of this as a business investment, in which the more you invest, the more you own? Or as a marriage-like investment, in which you put in more because you earn more, but each partner owns 50% of the home?" Hertz asks. You can also use the cohabitation agreement to spell out how you'll split other expenses, such as groceries and household goods, utilities and travel costs.

Your cohabitation agreement should address what will happen to the home if you break up. Will one partner have the right to buy the other out? Will you sell it? Similarly, if one partner dies, does the survivor have the right to buy out the deceased partner's share from the estate? The agreement also lets you address what should happen to other property in the event of a breakup--particularly property you owned before you got together. For example, you can include language in the agreement that states that if you part ways, "we leave with what we came with," Hertz says.

To reduce conflicts, Hertz recommends that both partners hire their own lawyer to draft the cohabitation agreement. That way, in the event of a contentious breakup, one partner can't claim that he or she didn't understand the terms of the agreement. Whenever possible, the children should be involved, too. Including adult children will reduce the likelihood that they'll challenge the terms of the agreement. "I can write an agreement that I am sure will survive a legal challenge, but surviving a legal challenge sometimes means five years and \$100,000 in fees," Hertz says. "I want to have an agreement that avoids a legal challenge, not survives it."

If children refuse to participate, partners should consider videotaping a statement in which they outline the terms of the agreement. This can be used to demonstrate that they were competent when they signed it.

Sorting out estate plans

Tom Blake, 75, author of *How 50 Couples Found Love After 50* (Tooters Publishing), has lived with his partner, Greta Cohn, for 14 years. For the first 13 years they lived together, Blake and Cohn lived in Cohn's Orange County, Calif., home. Blake rented out his home in Dana Point, Calif. After his tenants moved out last spring, they decided to move into his home.

Although Blake has no children, Cohn, 73, has four children, eight grandchildren and three great-grandchildren. Remaining unmarried, Blake says, will make it easier for Cohn to leave her property, which includes the home in Southern California, to her children. "My feeling is that her assets should go to the people that she wants them to go to," says Blake. Cohn has set up a will and trust to ensure that her estate will go to her kids.

How marriage affects estate plans is a common concern among older couples, who are likely to bring property and other valuables into the relationship and want them to go to children from previous marriages, says Victoria Fillet, a certified financial planner in Hoboken, N.J. Once you get married, she says, "it becomes very difficult to separate your assets."

Many states have "elective share" laws that require that a specific percentage of your estate go to your spouse, even if your will states otherwise, says Howard Krooks, a partner with Elder Law Associates and past president of the National Academy of Elder Law Attorneys. In New York, for instance, the law requires that 33.3% of the estate go to the surviving spouse unless the spouse waives that right. In Florida, it's 30%. "Even if you were to try to disinherit your spouse, the state law would trump your wishes," Krooks says.

For unmarried couples, making a will is paramount, especially if they are sharing a home owned by just one member of the couple. If the homeowner dies without an estate plan, the other member of the couple could be out on the street, Weiss says. "The state will not protect your significant other," he says. "The children can kick her out right away."

For partners who want to leave their homes to their children, one way to deal with this problem is to create a life estate for the surviving partner, says Austin Frye, a certified financial planner in Miami. This contract typically gives the survivor the right to live in the home until he or she dies or moves into a nursing home, at which time the house passes on to children or other heirs. In some cases, Frye says, the agreement will set aside money to cover maintenance and other expenses.

Although some couples remain unmarried to protect their estates, that strategy backfires if you end up paying estate taxes. If you're married, you can inherit an unlimited amount of assets from your spouse without paying state or federal estate taxes. You can also give an unlimited amount of assets to your spouse while you're alive without filing a gift-tax return.

That exemption doesn't extend to unmarried couples. Estates of up to \$5.43 million are exempt from federal estate taxes, but 13 states and Washington, D.C., have lower thresholds for their

estate or inheritance taxes. In Pennsylvania, heirs who aren't spouses or family members must pay 15% on their entire inheritance. Vincent Barbera, a certified financial planner in Berwyn, Pa., has a client whose partner of 10 years will owe about \$350,000 in taxes if she inherits his estate. "My official recommendation to him is to seriously consider marriage, because there's no other foolproof way to avoid paying the taxes," he says.

The tax code also favors married couples when it comes to inherited IRAs. A spouse who inherits an IRA can roll the account into his or her own IRA. The surviving spouse can postpone taking required minimum distributions until age 70½. In the meantime, the account will continue to grow tax-deferred. Spouses can also roll inherited Roth IRAs into their own Roth accounts; in that case, they're not required to take RMDs.

The same option isn't available to unmarried partners. However, an unmarried partner who is named as an IRA beneficiary can minimize taxes by rolling the account into an inherited IRA and taking distributions based on his or her life expectancy (see [Get the Most From Inherited IRAs](#)).

Preserving your benefits

Many older couples decide not to get married because they don't want to lose spousal Social Security benefits or a former spouse's pension, **says Lili Vasileff, a certified financial planner and president emeritus of the Association of Divorce Financial Planners.**

Divorced spouses are eligible for Social Security benefits based on their ex-spouse's earnings record as long as the marriage lasted for at least 10 years (see [Best Strategies to Boost Your Social Security Benefits](#)). That's a particularly valuable benefit for women who left the workforce to care for children or aging parents and have limited benefits of their own. They'll lose that benefit, though, if they remarry.

Widows or widowers who remarry before age 60 lose survivor benefits based on their deceased spouse's earnings. Most widows receive a higher benefit by claiming their husband's monthly benefit instead of their own, according to the Center for Retirement Research at Boston College. If your second marriage ends in divorce or your spouse dies, you have the right to reapply for benefits based on your first spouse's earnings.

Unless the divorce decree says otherwise, remarriage will end alimony payments from a former spouse. In some states, cohabitation is also grounds for terminating alimony payments, although states are having a tough time figuring out how to define the term, **Vasileff says.**

Remarriage could also mean losing a deceased spouse's pension benefits or other types of survivor benefits, such as annuities paid to spouses of police officers and firefighters. David Demming, a certified financial planner in Aurora, Ohio, says one of his clients has been living with her partner for more than 20 years because she doesn't want to lose her late husband's worker's

compensation death benefit. "There's a case where the economics against it are so overwhelming, you're never going to marry," he says.

Weighing the tax bite

In recent years, Congress has tried to make marriage less taxing for couples and, to a great extent, it has succeeded. Many young couples who tie the knot pay less in federal income tax than they would if they had stayed single. If both spouses are in the 28% or higher tax bracket, though, their combined income could trigger a marriage penalty.

The marriage penalty is particularly punishing at the top, 36.9% bracket. In 2015, that bracket kicks in for single taxpayers once their income exceeds \$413,200; for a married couple, the top rate is triggered once taxable income tops \$464,850. A couple (or individual) in the top bracket must also pay a 23.8% tax rate on dividends and long-term capital gains instead of the 15% that most taxpayers pay.

Married couples, including those with relatively modest incomes, could end up paying higher taxes on Social Security benefits than their unmarried counterparts. Taxes on Social Security benefits are based on what's known as your provisional income: your adjusted gross income (including pension payouts and retirement-account withdrawals but not counting Social Security benefits) plus any tax-free interest and 50% of your benefits. For singles, taxes don't kick in as long as the total is below \$25,000. That means an unmarried couple could have combined provisional income of up to \$50,000 without paying taxes on their Social Security benefits.

But for married couples, the hammer comes down once their combined provisional income tops \$32,000. The disparity continues up the income ladder. Married couples with provisional income of more than \$44,000 will pay taxes on 85% of their benefits; two unmarried partners could have combined provisional income of up to \$68,000 before paying tax on 85% of benefits.

Singles who live together have another advantage over married couples when it comes to taxes: flexibility. Say one member of the couple makes a lot more than the other. In that case, the high-earning member of the couple could pay the mortgage and deduct the interest (assuming he or she is liable for the debt and has an ownership interest in the home), and the other could take the standard deduction. Or the low earner may fall below the income limit for contributing to a Roth IRA (\$131,000 in 2015), in which case he or she could fuel the account even if the high-earning partner couldn't.

But unmarried couples could pay higher taxes when they sell a home. Married couples can exclude up to \$500,000 in capital gains on the sale of a home as long as at least one spouse has owned the home and both have lived in it for two out of the five years before the sale. For an unmarried couple to qualify for up to \$500,000 of tax-free profit, both individuals must be on the deed and have owned and lived in the home for two of the five years before the sale. If only one meets that standard, the exclusion is capped at \$250,000.

College costs. Another drawback to marriage is that it could affect your college-age children's eligibility for financial aid. The Free Application for Federal Student Aid (FAFSA), which is used to determine how much financial aid a child will receive, counts the income and assets of both spouses, even if only one is the child's parent. As long as they were married on the date the parent files the FAFSA, the government will count the stepparent's financial resources (even if he or she declines to contribute to college costs).

If the couple is unmarried, the live-in partner's assets and income aren't counted, as long as the partner isn't the child's biological or adoptive parent, says Mark Kantrowitz, senior vice-president and publisher for Edvisors.com, a financial aid Web site. Kantrowitz notes, however, that any financial support provided by the partner--which includes living expenses, gifts and loans--must be reported on the FAFSA as untaxed income to the student. If both parents live together but aren't married, they must report their income and assets on the FAFSA.

But marriage isn't always a negative where financial aid is concerned, Kantrowitz says. If both partners have children, marriage could increase the size of the household and the number of children in college, which could increase eligibility for financial aid.

Tom Blake says he and Greta Cohn haven't ruled out getting married someday, but for now, their current arrangement makes sense. "It's just a lot easier not to have to deal with inheritances and kids and everything that comes along with the decision to get married," he says. Blake, who writes an online newsletter for older singles, advises couples who want to get married to live together first, in case the relationship doesn't work out. Even if it thrives, he says, "you can have a great life together without tying the knot."

In sickness and in health?

The high cost of health care--particularly long-term care--can create one big disincentive for older couples to get married. Once you wed, you are responsible for your spouse's medical debts, says Howard Krooks, a past president of the National Academy of Elder Law Attorneys. If your spouse ends up in a nursing home, the cost could deplete your estate.

Medicare doesn't cover most nursing home care, and married couples' combined assets are counted when determining eligibility for Medicaid. The spouse who remains at home is generally allowed to keep a certain amount of "countable assets" (for 2015, spouses can keep up to \$119,220) along with certain exempt assets, such as a car. An unmarried partner's investments, savings and other assets usually aren't counted at all unless they're jointly owned.

The views and opinions expressed herein are the views and opinions of the author and do not necessarily reflect those of The NASDAQ OMX Group, Inc.