Make sure your new marriage is solid before changing any mortgage documents

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Q: My fiancé and I plan to marry. This is the second marriage for each of us. When we marry, we both plan to live together in my home. Are there any legal issues about the home that we should be concerned about?

A: Yes, there are a number of them.

Capital Gains Tax Issues: If your home has increased significantly in value since you purchased it, there could be tax advantages to adding your new wife to title and, even more, if

you were to change ownership to community property ("CP").

Reason: If she were to die before you, the entire home — if held as CP — would then get a favorable adjustment in tax basis equal to its market value at the time of her demise. This adjustment "bump" could eliminate, or at least substantially reduce, capital gains tax in the event you later sell the home.

Conventional Home Loan: If you currently have a conventional home loan or home equity line of credit, you might consider adding your new spouse to the home loan.

Reason: If you were to predecease her before the loan was fully paid off, and if she could no longer afford the mortgage on her income alone, she might find herself unable to modify or refinance it.

Many lenders refuse to deal with any person who is not on the loan. In an extreme case, she might even lose the home through foreclosure. For more on this concern, see the article which appeared in the online edition of The New York Times on December 1, 2012, entitled "Mortgage Catch Pushes Widows into Foreclosure."

Reverse Mortgage Loan: If you have taken out a reverse mortgage on your home, then you probably know that no payments are due until you either sell, die or move out of your home. So, if you were to die before your wife, and if she were not on the loan, the lender would very likely then call the loan due.

If she were unable to refinance the loan with another lender, she might then be forced into a disadvantaged sale or, in the worst case, into foreclosure. In either event, she would lose the right to continue to reside there.

To guard against this risk, ask your reverse mortgage lender to add your wife to your loan. Unfortunately, this may not be as easy as it sounds, as the terms of your reverse mortgage loan were based upon your own age and a single life expectancy. Yet, it may still be possible to arrange this, albeit on new loan terms.

In 2011, AARP filed a class-action lawsuit challenging this lender practice, but the case is still pending and the legal issues have not yet been fully resolved.

Caution: none of the above steps should be taken until you are certain that your new marriage is solid, as each of the above steps would have serious implications for both of you in the event of a later divorce.

My suggestion: Wait until a sufficient amount of time has elapsed after your remarriage, until you are both certain that your marriage will endure. Also, the above steps should be coordinated with an update of your trust and wills, as well as with your long-term-care plan — matters to be discussed in my next article in the Senior Edition of this newspaper.

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