

Getting Married? Issues to Consider When Purchasing Property Before the Wedding

Let's say a couple is engaged to be married. However, before the marriage ceremony, the couple decides to purchase a marital home. Possibly, they want to buy a first house, condominium or cooperative apartment. Prior to doing so, there are certain potential concerns to address.

The options for purchasing the property vary:

- One party may want to provide the down payment.
- The couple may decide to buy the home with title in one name only.
- They may decide to purchase it together with both names on the title but one person out the mortgage.

With these and other scenarios, the couple needs to know how the purchase of the property may affect them in the long run in terms of inheritance rights, divorce, or even if one party decides at the last minute not to get married.

Example: A couple is engaged and purchases property jointly but the title is only in one name. They decide to handle the transaction without a written agreement and agree verbally to share all the expenses fifty-fifty. Lo and behold, one party breaks the engagement, moves out and says, "Why should I continue to make mortgage payments if I no longer live there?" He or she demands the money back for his share of the down payment and renovation costs. The other party changes the locks. They argue over who gets to claim the mortgage interest deduction on their tax returns. With no written contract between the couple, there are generally no easy answers to the issues they must face.

No one knows what the future holds, so it is best to determine in advance what can happen in various scenarios.

Laws Vary State to State

What happens if a couple buys a house with one name on the title and then gets married? Later, one of them dies and the house is not listed in the will. What happens? To help answer these questions, you have to look at the laws of your state. Some states are community property states, while others allow for a "right of election" (the right to have a minimum share of assets in each other's estates). Still other states have variations of these rules.

For example, Arizona is a community property estate. Accordingly, the surviving spouse is entitled to share in the community property of the marriage. Therefore, a right of election is not applicable. On the other hand, in New Jersey a surviving spouse has a right of election and can exercise that right upon the death of the spouse. Please consult with your attorney about the laws in your state and your specific circumstances.

Looking at a Potential Situation

Let's examine one scenario of an engaged couple buying a home. Assume the state permits a right of election and is not a community property estate. One-half of the couple wants to purchase property in his or her name only. What are the risks to the other person whose name is not on the property? What if a fiancé pays the entire down payment and the title goes in his name? How will that affect the couple in the long run? Would the property be solely considered as his, or would it be considered a shared asset once they are married? If he is the sole person purchasing, does he have the option (should he want to) to put both names on the title? What happens if the couple divorces or one of them dies? Is there domestic partner registration in the state and how does it affect property ownership?

In this situation, if the fiancé pays for the entire down payment and title goes in his name, then he owns the property. It is his separate property. When the couple gets married, the property is still in his name. To get both names on the title, the fiancé would have to re-title the property to be in both of their names as "tenancy by the entirety." Otherwise, it remains in his name and upon his death, he can distribute it to anyone he pleases. However, let's say that in the state where the couple resides, surviving spouses always of a "right of election," or the right to share in the total estate.

If there is a mortgage, the mortgage company most likely would want to approve any transfer of title into the couple's name. In other words, if there is a mortgage in one party's name only, the mortgage company may want to approve the property being transferred into both of the names. (Check the mortgage agreement.)

Note that a couple can always have a prenuptial agreement stating the terms and conditions before marriage, after marriage and in case of divorce and death. Of course, a person can always leave the property to a spouse or fiancé in a will.

If one party purchases a property prior to marriage and keeps it in his or her name, and then the couple gets divorced, the results will depend on state law. However, in general any contribution made to it during the marriage could be equitably split -- or considered community property, depending on the state.

Costs and Benefits of Purchasing before Marriage

The benefit of purchasing before marriage may be more practical than legal. The couple has a property they can move into as they plan the wedding and after the marriage occurs. The negative is that the property may be considered separate property and not marital property for legal purposes. The advantage of buying a home *after* marriage is that it would generally be considered marital property. Of course, the practical disadvantage is the couple has to wait until after the wedding to purchase and set up a home.

Discuss these issues with your attorney prior to making any real estate purchases. Your attorney will be able to provide proper legal counsel for this new endeavor. And if you're getting married -- congratulations and good luck on your marriage!

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com