Marriage does, however, have many legal consequences, as well as benefits, that a couple should consider. This brochure discusses the legalities of marriage in Virginia, including name change, debt, property rights, insurance, powers of attorney, and support obligations. It is published by the Virginia State Bar, the official organization of lawyers in Virginia, through its Family Law Section. Its purpose is to provide the public with answers to some questions about the law in Virginia with respect to marriage and related areas.
4. What are the legal considerations in marriage?

A. Name Change

Upon marriage, you may change your last name to your spouse’s, but you are not legally required to do so. You may also use a hyphenated surname after marriage. However, if you change your name and records and later want to resume your earlier name, you must petition the circuit court of the city or county where you live for legal name change. You may also resume use of your former name as part of a divorce proceeding. In order to keep records straight, any name change should be communicated to all government agencies that might be affected, such as the Social Security Administration and the Department of Motor Vehicles. Further, you should notify your bank, insurance companies, employers, and others of your change in name and marital status.

B. Property Considerations

Marriage does not automatically put the spouses’ property in both of their names. However, most property and pensions acquired during the marriage (except for inheritance, certain portions of personal injury awards, property owned separately before the marriage, and gifts from other people) are treated as both spouses’ property in the event of a divorce. State and federal laws give married people many different rights in each other’s property, pensions, and insurance in the event of divorce or death. If you choose to put property solely in your spouse’s name, however, or to title your pre-marital property in both names, that may diminish your legal right to it upon divorce. Virginia generally applies the concept of equitable distribution to all property acquired by the parties from the date of marriage regardless of how the title to that property is held.

It is possible for the spouses to change or give up the rights they obtain in each other’s property by reason of their marriage through a written agreement, such as a prenuptial (or premarital) or marital agreement. (See “Prenuptial Agreements” below.) Such agreements are in accordance with public policy to encourage and strengthen marriage. Marriage is a very serious commitment, and couples should communicate property concerns and considerations to each other before marriage.

C. Debts

Marriage does not automatically make one spouse responsible for the individual debts of the other if the spouses did not co-sign the loans or credit card applications. However, a spouse may become liable to a third person for the cost of any basic necessities provided to the other spouse by the third person. If you and your spouse incur debt together, the creditor can usually sue either one of you for the entire amount. In a divorce, the judge will divide the debts between the spouses, not always equally. Sometimes this will include some debts that are only in one spouse’s name.

D. Insurance

All insurance companies that may be affected by your change in status should be notified immediately. In addition, consider changing the beneficiaries of your life insurance policies.

Automobile insurance rates may change favorably for you, and both spouses can be named as insured on the same policy. Combining hospitalization coverage can also save money, especially if one of you is covered by a group policy. An insurance agent can be helpful in advising you about what should be done with existing coverage and what additional coverage, if any, should be obtained.

E. Powers of Attorney

You may desire to give your spouse the power to act on your behalf in the event that you become incapable of handling your own affairs due to accident, sickness, or distant travel. With the power of attorney, your spouse may be powerless to make decisions on your behalf. A power of attorney can avoid the need to petition the court for the appointment of a guardian, conservator, or both for the disabled spouse. Powers of attorney can be designed to be effective only when certain specified conditions exist. The person granting the power of attorney can revoke the power at any time, so long as he or she is mentally competent. You should consult your attorney to determine whether a power of attorney would be appropriate in your case, and if so, what the scope of such power should be.

F. Support Obligations

In marriage, spouses are mutually responsible for the support of each other. Circumstances may arise in which one of you might become obligated to support the other. Both of you should be aware of this as you establish your respective roles in the marital relationship. Usually the question of this support obligation only arises upon separation or divorce, and at that time the court will look to the history of the marriage as well as to who was at fault in its breakdown. If either of you has been placed in a financially dependent position by the marriage, the partner with the earning power or financial means may be ordered to contribute to the support of the financially dependent partner. Therefore, even though a marriage must be built on faith, both spouses should closely examine the plans for each of their respective roles in the marriage and the possible consequences of this arrangement in the event of separation or divorce.

G. Wills and Estate Planning

It is never too early to write a will. Even though you may be young or have few assets, it is wise to consult a lawyer about estate planning. It is not how much you have but where you want your property to pass upon your death that is important. Proper estate planning helps protect your family from unnecessary financial hardships that might occur after your death. In most instances, you cannot disinherit your spouse without your spouse’s consent, for example, through a waiver in a prenuptial, marital, or property settlement agreement. If you die without a will, your entire estate will pass to your spouse under Virginia law unless you have children by a previous marriage. If both you and your spouse die without a will, your underage children’s share of your estate could be tied up in guardianship and might not be readily available for support and education.

If you had a will before marriage, it is important that it be reviewed in light of your changed status. For more details, ask for the brochure titled Wills in Virginia published by the Virginia State Bar.

I. Taxes

As a married couple you can file a joint income tax return with both the state and federal governments if you were married by the end of the tax year. A joint return can often save you taxes, but its advantages depend on each couple’s individual financial situation. Some married taxpayers are better off filing separate returns. Consult a tax expert on these matters.