

Wills and Second Marriages

Second marriages (also known as “blended families”) present a host of estate different and complicated estate planning issues. We also see with increasing frequency the blended family with “his, hers and theirs” children, creating another set of potential pitfalls.

Spouses usually want to make sure the survivor of them is provided with sufficient resources to remain in comfort for life. But what happens when, for example, his children from a prior marriage are not hers, and he leaves his assets for her benefit?

Some key issues and potential solutions are:

1. Unique problems arise with IRA/401k accounts. For example: His IRA (created many years ago) may name his children as beneficiaries. The couple may have been happily married for 10 years and the wife would be left destitute without his IRA. One option: husband may leave his IRA to his wife on the condition that she name his children as the beneficiary on her death.
2. Thought should be given to what the children of the first marriage will receive when the first of the couple dies. Two solutions are to provide an outright bequest of a portion of the estate, or, name them as beneficiaries on an insurance policy. The children of the first deceased spouse will feel loved and cared for by their parent and not relegated to an inferior position. This can be especially important if the parent has married a much younger spouse. This can also positively affect their future relationship with the surviving step-parent. Indifference to this issue has led to many acrimonious relationships between children and step-parent. Wills can provide recognition to the children of the both prior marriages.
3. The Living Trust is often the best tool where the surviving spouse needs assets to survive. The trick is to arrange for the predeceased spouse's children to receive a fair share on the surviving spouse's death while also providing for the use of assets and income for the surviving spouse, and then an equal distribution among both families after the second death. Provisions can be made to prevent the surviving spouse from giving everything to his/her own children. Selecting an appropriate co-trustee to serve with the surviving spouse can prevent this occurrence.

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4. Prenuptial agreements may need to be changed to reflect changed circumstances. For example, one spouse often wants to provide life rights in the marital home to the survivor, something expressly forbidden in the prenuptial agreement drawn up many years earlier. A life estate arrangement in a Will or Trust can also address this very easily.

With a little thoughtfulness on your part and the help of an experienced elder law estate planning attorney, second marriage couples have the ability to "do the right thing" for all concerned and avoid acrimony in the family.

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