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Blended Families: Estate Planning For Ex-Spouses, New Spouses, Children, And Stepchildren

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Second marriages are common in the United States, likely for two reasons: (1) over 50% of first marriages end in divorce, and a majority of those who go through divorce, remarry for a second, third, or fourth time, and (2) individuals are living much longer and outliving their spouses, leaving many widows and widowers with the opportunity to remarry.

With remarriage, comes the blending of assets and family, resulting in a new family unit. There is no “one size fits all” estate plan for a blended family; it requires a balancing of the needs of the new spouse and children of the current marriage, with the needs of the stepchildren, children of the prior marriage, and demands of the ex-spouse. Ideally, you want to provide for all of them (well, maybe the court forces you to provide for the ex-spouse). Expecting your blended family to “work it out for themselves” will cause stress and division amongst your blended family members after your death.

Children are often disinherited when the deceased spouse gives everything to the surviving spouse outright with an informal agreement that each spouse’s children are to be treated equally. If a deceased spouse directs all their assets to the surviving spouse (or assets are owned jointly), the surviving spouse can, and often does, forget their promise and redirect the assets to their own children. While it is honorable to rely on your spouse’s “understanding” and “promise”, it is wise to understand the surviving spouse has no legal obligation to leave assets to the first-to-die’s children at the second spouse’s passing.

Providing for Spouse and Children from Prior Marriage. Rather than leaving all your assets to your spouse outright, your estate plan can direct the assets to a trust for your surviving spouse’s benefit. Upon the surviving spouse’s death, the unused assets in the trust pass to the next beneficiary as specifically directed by you. To ensure the trust funds are used properly, name a corporate trustee to oversee distributions. Such an arrangement protects your surviving spouse from unforeseen creditors, as well as unforeseen suitors, and guarantees your children will receive an inheritance.



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A prenuptial, post-nuptial agreement, or a contract to make a will, can also provide protection to family members as to assets inherited by a surviving spouse.

Your Ex-Spouse. Just because you finalized your divorce, it does not mean your ex-spouse or their family is out of your estate plan. Only since July 1, 2012 has Florida had legislation clarifying that an ex-spouse named as a beneficiary on your life insurance policy, annuity, IRA, or 401(k) plan is void under Florida law. While many states now have laws automatically voiding gifts to ex-spouses via Will or Trust, there still remain unresolved issues that are not automatically addressed by statute. For example, if your estate plan provides for a gift to an ex-mother-in-law, or appoints an ex-brother-in-law as a fiduciary, you need to modify your estate plan in order to remove the provision. Also, gifts to minor children from a prior marriage will likely result in your ex-spouse having control over those assets as parent or guardian, unless directed otherwise in your estate plan.

Planning your estate can be tricky business, and the added complexity of a blended family only increases the considerations that must be taken. If you are remarried, consult with your attorney or financial planner to make sure your estate plan meets your goals of providing for your blended family.

If you have any questions, please contact any of the members of our Trust and Estate Department listed below.

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