

## Estate Planning for Blended Families

“Blended families” are families in which multiple family groups can be identified. They are sometimes referred to as “step-families.” Demographic studies indicate such families will be the most common type of family by the year 2015. While many facets of blended family life are similar to the traditional nuclear family, there are many others which require careful and honest evaluation in order for suitable estate planning documents to be drafted.

One of the first inquiries is whether a premarital agreement is in place. If not, it is not too late to arrange for a marital agreement, in which the spouses can agree to make certain provisions or waive claims to facilitate the overall blended family estate plan. For example, couples can require each other to purchase long term health care insurance or maintain life insurance for their mutual benefit. (See, [Prenuptial Agreements](#)).

The next inquiry involves checking every last beneficiary designation they have – the courts are replete with cases filed by children or second spouses against former spouses who were still named as beneficiaries on various assets. Although recent Virginia legislation has attempted to remedy these results, it is best to update all of them to reflect the correct primary and contingent beneficiaries once the overall plan is established.

A common oversight in blended families is the assumption that the children will be pleased to await their inheritance until the step-parent dies. Another perspective, doomed to failure, is that the kids will just have to wait, even if they are not pleased. It is far better to address the perfectly human reaction to certain circumstances affecting one’s expectations. Accordingly, the well-designed estate plan should take into account multiple permutations of events, which can involve the simultaneous, untimely deaths of both spouses or the death of one spouse and the long life of the survivor, long enough to deplete the other’s estate due to long term health care costs. Life insurance is often an ideal solution to this issue, since it enables one to provide a significant benefit for his or her children at the insured parent’s death, leaving the residence and the IRA for the benefit of the spouse, for example.

Trusts are a powerful and reliable tool in the blended family estate plan, assuming that the trustee, with discretionary authority over distributions, is not a person interested in the remainder (i.e., son in charge of disbursements to step-mother of the same age). Resources can be held in trust, by an independent trustee, and distributed in accordance with provisions and guidelines designed to provide adequately for the income beneficiary, with the remaining assets passing to children at the spouse’s death. Marital trust assets will also be free of the

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claims of the survivor's new spouse (or the exhortations of a very interested non-spouse), so long as the spouse is not the sole trustee.

Trusts also address the risk that disagreements will force family members into procuring “dueling” powers of attorney to gain control over assets of a failing spouse or parent. Invariably, these circumstances will end up in court with each party demanding a court appointment as guardian and conservator. In such cases, the courts will typically appoint an independent, public guardian/conservator, with all of the attendant supervision and accounting requirements imposed upon your resources because of the not-so-blended family. The successor trustee of the incapacitated spouse's trust assumes management duties upon private confirmation of the inability of the grantor, and no attorney-in-fact may interfere with the proper administration of the trust.

Parents who desire that their children not interfere with their intentions to provide for their new spouse may consider including an in terrorem, or “no contest” clause in their trust and will documents. For that matter, the spouse could be included in the warning, as well. These terms direct that the share of a beneficiary who challenges or interferes with the validity or administration of the probate or trust estate will be forfeited for themselves and their issue.

While it would be a wonderful world indeed if we could rely on the integrity and perpetual mental health of family members to “take care of” their step-relations, there are far too many potential influences and events to allow one to depend upon such fragile arrangements for these important legal and financial obligations. Properly drafted legal instruments can provide long-term security for the protection of the interests of all of the blended family members and, thereby, bring a sense of confidence and comfort to the table (especially important at Thanksgiving). It is in the best interests of every member of the blended family to initiate and implement a comprehensive estate plan with the assistance of experienced counsel.

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