



e-Legals is a periodic publication for friends and clients of The Rack Law Firm, P.C.

Providing Trusted Counsel in Matters Involving Estates, Trusts, Taxation, Elder Law, Estate Litigation and Business and Tax-Exempt Entities

Kevin B. Rack, LL.M.  
[Taxation]

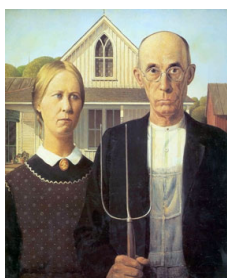
Flora T. Hezel, LL.M.  
[Taxation]

Nathan R. Olansen, LL.M.  
[Taxation]

Jennifer L. Moccia, LL.M.  
[Estate Planning]

Nicole D. Morris, Esquire

Of Counsel  
Michelle ReDavid Rack,  
Esquire



## The Brady Bunch Syndrome Estate Planning Presents Challenges for Blended Families

When Mike and Carol Brady blended their ready-made families in the early 1970s, the three handsome boys and three very, very lovely girls became television's "Brady Bunch," a popular icon for the dramatic social changes resulting from the rise in the rate of divorce. During the past decade, the rates of remarriage after divorce rose, keeping in step with the "age wave" of baby boomers. These couples, now reflecting on the practical details of planning their estates, are realizing new complexities generated by the union of their respective families.

Whether one or both spouses in a blended family have children from a prior marriage, conflicting goals may lie just beneath the surface. While the new Mr. and Mrs. Brady may blissfully assume that their intended legacies for each other and their respective children are mutually acceptable, those same intentions may later become entangled in the legal rights and moral obligations of marriage. As the Brady housekeeper, Alice, might say, it could be a recipe for disaster: Start by blending fresh separate property, sprinkle on a mix of romantic promises, drizzle on some spicy step-kid sauce, add a spoonful of guilt, and stir occasionally. Next, watch as the palpable strain from the unforeseen complications of emotional and economic reality begins to boil and separate the blended family unit.

Perhaps the cooking analogy is overly dramatic, but it is effective to illustrate the many new ingredients involved in the blending of family relationships. For those who have blended their families together without a clear understanding of these rights and obligations, we present the following first-death scenarios to illustrate the complexities and offer a menu of possible solutions for careful consideration.

### Strategies for Keeping the Family Blended

We designed the following scenarios to illustrate the potential for legal issues arising in blended families, given that many who are planning to remarry are unaware and, naturally, are not looking to create issues. The scenarios were also selected to demonstrate that solutions for these problems can be found and implemented, so long as couples and their advisors take the time to consider the long-term circumstances in each unique family situation. Consider the following scenarios

#### Scenario #1:

#### My Estate Goes to My Surviving Spouse (Even the Kitchen Sink)

Having been smitten by true (but mature, to be sure) love, many married couples choose to leave all of their assets to each other at the first death. Whether in the form of joint bank accounts, retirement accounts, life insurance policy benefits, real property or personal items, the entire estate will pass to the survivor, and each spouse is comfortably under the assumption that the surviving spouse will treat all of the children equally. Unfortunately, Mike (if he is the surviving spouse) may not be pre-disposed to include

Carol's daughters in his estate plan. After the wife passes on, he is very likely to have a new last will and testament drawn up, and those three very, very lovely girls may not get an equal share with the Brady boys. Since a surviving step-parent has no legal obligation to preserve or provide an inheritance for the pre-deceased spouse's children, Carol may have unwittingly disinherited her natural children by leaving her entire legacy outright to the new spouse.

Happily, there are recipes for creative estate planning solutions to these decidedly dastardly results. Will Mike and Carol seek out and retain competent estate counsel in order to enhance, rather than challenge, the potential for lasting blended family relationships? Is there a trust that can be established to achieve these goals?

**Scenario #2:  
My Estate Goes to My Children  
(He's Just Not That Into You)**

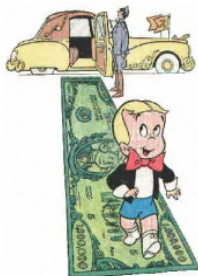
Mike Brady believes that Carol would be self-sufficient if he met with an untimely death, so he arranges for most of his estate to pass to his children of the former marriage. He also intends to change his estate plan to provide for Carol over time as the children grow and his marriage to Carol matures. Unfortunately, Carol may be left with insufficient resources to support herself and her daughters if she receives nothing from Mike's estate. As illustrated by the cartoon, many states still have laws that allow the surviving spouse to "renounce the Will" of the decedent and take under the statutory provisions for a forced spousal share (under the old concepts of dower and courtesy).



Fortunately for Carol, the Virginia Code was amended in 1991 to enable the surviving spouse to claim an "elective share of the augmented estate" of the deceased spouse.

This "augmented estate" is essentially the value of all assets passing through the probate estate, augmented by other resources left to one's beneficiaries outside of probate (such as life insurance policy death benefits). The total augmented estate is then divided into thirds, one of which is allocated to the surviving spouse. From that share, benefits already received by the spouse are then subtracted, and the resulting balance is paid over by the executor to complete the elective one-third share. In the case of Carol, she would be entitled to claim a full third of his assets (of her choice), since he left her nothing voluntarily.

The intent of the legislature was to prevent the complete disinheritance of a spouse, whether by design or by oversight on the part of the decedent. There are also defenses to the elective share claim, such as written waivers in a pre-marital agreement or proof of desertion or abandonment by the surviving spouse. Clearly, the task of determining the elective share of an augmented estate is always complex and often contentious, but in the absence of a clear estate plan as to these issues, they must be addressed by the decedent's family or, when necessary, the courts.



**Scenario #3:  
When Minors Inherit  
(A Series of Unfortunate Events)**

Many families become "blended" while some of the children are still minors, creating a situation which calls for careful estate planning. Consider the tale of woe borne of the accidental beneficiary designation: Mr. Brady purchases a life insurance policy some time before his divorce and, with no professional guidance, names his beneficiaries as

follows:

- Primary - the former Mrs. Brady, if she survives; or
- Contingent - his three sons, then aged 14, 11 and 7.

He marries Carol and, before he can designate her as primary beneficiary on the change form he downloaded from the insurance company website, he dies suddenly while on the honeymoon trip (remember, this is television drama). So, what happens now?

Under Virginia law, the divorce decree nullified the beneficiary designation to the now-former spouse, so the life insurance policy death benefits are payable to the minor children as contingent beneficiaries. However, since the insurance company will only pay over the proceeds to a court-appointed guardian for the minors, the ex-wife, as the surviving parent, would likely acquire control of the child's inheritance until the age of majority. It is little consolation that the courts will impose strict oversight over the administration of these funds by the guardian during the child's minority, since he will be able to demand and secure possession of his inheritance, and to begin the spending spree, on or after his 18th birthday.

As if this were not a miserable enough result, recall that the absence of a marital agreement waiving the surviving spouse's "elective share" means that she may claim one-third of the value of the augmented estate, including the proceeds of the life insurance policy payable to her minor step-sons! Thus, Carol could segregate and take the value of Mr. Brady's legacy intended for Greg, Peter and Bobby by claiming her elective share, then change her Will to bequeath the funds taken from Mike's estate (in addition to other assets she received from him) to Marsha, Jan and Cindy. It is likely that even Alice would be unable to mediate this family feud once it boils over.

What could Mike have done to eliminate this legacy of hate and discontent?

**Scenario #4:  
From May to December**

There is an adage in the world of will drafting that reminds prospective testators that "fair does not always mean equal." Although many parents in blended families have a genuine desire to treat all of their children "equally," they often make provisions to rectify the unfairness (real or perceived) of giving equal shares to and among children whose ages vary dramatically. In a classic May-December marital union, an older gent with grown children marries a much younger woman, and before long, his new wife gives birth to a new set of children. As the shock recedes to numbness, the mature but prolific father would reasonably be motivated to leave a more substantial portion of his estate to the minor children for their support and education before any other distributions are made to the adult children.



In this scenario, it is possible that the inheritance anticipated by the grown children could be depleted by their father's much younger family, while they watch helplessly in horror. While the older children have no "right" to an inheritance, their perception of entitlement becomes reality. Did Father really know best? Could he have done better?

**Consider Family Goals, Then Get Legal Advice**

As these scenarios illustrate, couples who are planning to blend their families in a new marriage should make time for thoughtful consultation on the legal issues which could arise. With guidance from experienced

counsel (and not Alice), the goals for each family can be met by crafting and implementing estate plans that provide for each spouse and protect the interests of their respective children.

Simply put, successful “blended family” estate planning is a matter of setting and communicating goals, learning the available legal strategies, implementing the chosen documents and setting expectations for everyone else at the table to preserve goodwill and – needless to say – harmony in the family.

### The Calming “C”s for Blended Families

As those of you who belong to blended families begin the process of planning your estates, follow these steps to smooth sailing through the treacherous waters of uncertainty:

1. **Consider** – the impact of your existing estate plan (or lack of one) on all concerned
2. **Clarify** – intentions and goals for each other and each other’s children
3. **Compile** – a complete list of all assets and beneficiary designations
4. **Contact** – an estate attorney and a financial advisor to set up conferences
5. **Consult** – with counsel regarding legal issues and solutions to obstacles
6. **Calculate** – the amount of the elective share of your augmented estate which might pass to your spouse
7. **Change or Confirm** – beneficiary designations on retirement plan accounts, life insurance policies and annuities
8. **Communicate** – with spouse and children to set reasonable expectations as to timing and amount of inheritances
9. **Control** – the division and distribution of your assets among your spouse and children
10. **Call** – your favorite romantic restaurant for dinner reservations to Celebrate!!

If you would like for any of our attorneys to speak to your group on a topic within our practice areas, please call Erin Hamberg at 757-605-5000.