



Estate Planning Considerations for Blended Families

By: Jennifer L. Moccia, JD, LL.M.



As the rates of divorce and remarriage climb, those with recently blended families may be witnessing the emergence of troublesome estate planning issues. The interests of a new spouse and child can create conflict with a parent’s desire to provide fairly for children from a previous relationship, causing unforeseen complications, misunderstandings, and damage to the blended family unit. For those family members without a clear understanding of their new rights and obligations, the following scenarios provide examples of common planning problems and potential solutions to these issues.

Scenario #1: All Assets to Surviving Spouse.

Many married couples choose to leave all of their assets to each other upon the first death, under the assumption that the surviving spouse will treat all of the decedent’s children equally. However, children from a prior relationship may not be provided for by the surviving spouse in accordance with the desires of the deceased parent. Since a surviving spouse has no legal obligation to support or provide an inheritance for the predeceased spouse’s children, a parent may unknowingly disinherit a natural child by leaving all of his or her assets to a new spouse. Also, if the surviving spouse is substantially younger than the deceased spouse, a majority of the child’s eventual inheritance could be depleted during the lifetime of the survivor, greatly reducing what amount, if any, is left for the child upon the death of the surviving spouse. The QTIP Marital Trust is often the best estate planning vehicle by which to address this issue. While the surviving spouse must be entitled to receive the current income of the QTIP Trust, he or she does not have to be granted the ability to ultimately dispose of the property. Therefore, the first to die can control the final distribution of the QTIP Trust and be assured that the property will go to his or her children upon the second death.

Scenario #2: All Assets to Children. When a deceased parent leaves all, or a majority, of the family assets to his or her children, the surviving spouse may not

have sufficient resources to continue to live comfortably. In order to alleviate the financial burden caused by this situation, many states allow a surviving spouse to claim an “elective share of the augmented estate” of the deceased spouse in order to ensure that no spouse is entirely disinherited. The elective share amount is statutorily calculated, allocated to the surviving spouse, and paid from the assets left to the children of the deceased. A marital agreement (either prenuptial or postnuptial) can prevent these complications. In the classic marital agreement, each spouse agrees to give up some or all of their right to the other spouse’s assets. Each spouse is then able to arrange his or her estate plan so that it will be distributed in accordance with their wishes, free of claims (such as the elective share claim) which might otherwise be made by the surviving spouse.

Scenario #3: Assets to Minor Children. If a deceased parent unwittingly leaves assets outright to a minor child from a prior marriage, the surviving parent (usually an ex-spouse) is likely to acquire control over the inheritance until the child reaches the statutory age of majority. Upon attaining that age, the child would legally be allowed to access – and spend – the entire inheritance. The most common vehicle for achieving flexibility and fairness in this situation is the trust, with provisions requiring an appointed trustee (rather than an ex-spouse) to hold the assets in trust until the child reaches a predetermined age. The trustee is also granted varying degrees of discretion to distribute trust funds to the child until he or she reaches the final withdrawal age, which allows the child to benefit from the inheritance without the ability to squander the assets.

Scenario #4: Assets Split Between “Old” and “New” Family. Although many parents desire to treat all of their children equally, others have determined that fairness does not always mean equality. Instead of evenly splitting an estate among living children, some parents prefer to divide their assets unequally after considering the

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respective needs of each child. It is not uncommon for a client with a much younger spouse to create benefits for his or her children from a prior marriage by purchasing a life insurance policy and designating the proceeds payable to them. Rather than postponing the child's inheritance until the death of a stepparent, the child can receive a large cash sum immediately upon their parent's death, and the remaining estate assets can be left to the new spouse.

Consider Family Goals. Successful blended family estate planning is a matter of setting and communicating goals, learning the available legal strategies, implementing the chosen documents and setting appropriate expectations for the client. With guidance from experienced counsel, the various goals of each family can be met by crafting and implementing estate plans that provide for each spouse and protect the interests of their respective children.

About the Author:

Jennifer L. Moccia, an associate at Rack & Olansen, P.C., received her B.A. in Psychology and Business Management from the College of William and Mary, her J.D. from Regent University School of Law, and her LL.M. in Estate Planning from the University of Miami School of Law. She serves on the Board of Governors for the Virginia State Bar, is Chair of the YLC Professional Development Conference, and is a member of the American Bar Association Real Property, Trust and Estate Law Section.