Divorce, remarriage, stepchildren, half-siblings, in-laws ... these are all components of many of today’s modern families that can make estate planning a challenge. If you don’t proactively address the issue of who receives what when you die, your death could trigger as much greed as grief among family members.

Overview

Conventional wisdom has it that when one spouse passes away, assets transfer to the surviving spouse so that he or she may comfortably continue the couple’s lifestyle. However, we no longer live in a conventional world. According to The Stepfamily Foundation, half of all marriages end in divorce, and 75 percent of those spouses remarry. As a result, 50 percent of children in the U.S. live with one biological parent and that parent’s current partner.¹

This can create long-term challenges for estate planning. While there are a wide range of strategies to address the transfer of assets among “blended families,” determining which ones work for individual families depends on a vast number of variables. For example, how old are the children when parents recouple?

This is important because younger stepparents may be more involved in the financial support and upbringing of their stepchildren — and thus may be more bonded with them. On the other hand, remarriage among older couples may not yield the same relationship with their new spouse’s children if they were grown and out of the house before the couple got together. In this scenario, why would you want part of your estate to go to children you barely know?

These are important distinctions because one spouse may want his or her own children to receive their assets once both spouses pass away, as opposed to having them split between children and stepchildren. Worse yet, if the surviving spouse remarries and then dies, those household assets may then be passed on to the new spouse and his or her children — completely bypassing the first-to-die spouse’s children.

Without careful estate planning, these can be common scenarios. Parents who remarry should proactively strategize and deploy sophisticated planning tools to help ensure their assets are passed to chosen heirs upon their death.

Beneficiary Designations

It's important for spouses with blended families to discuss how they want to leave their individual assets. If one was single for a long time before the marriage, his or her investment, insurance and bank assets may name
his or her children (or even former spouse) as beneficiary. Be aware that any account beneficiary designation will take priority over the provisions of a will. Therefore, it’s not enough that newly remarried spouses rewrite their wills; it may be necessary to change these account designations to help ensure that each surviving spouse has enough assets to live on if the other one dies.  

Marital Claims

Instructions detailed in a will are vulnerable to state laws designed to prevent the disinheriteance of a spouse. Some states feature what is referred to as an elective or statutory share, which means the surviving spouse may have the right to a proportionate share of his or her deceased spouse’s estate even if the will specifically disinherits the spouse. These rules vary, with some states taking into consideration how long the couple was married and if they have young children. In many scenarios, the surviving spouse has the option to receive either the amount dictated by the will or the state’s elective share, which often is one-third of the deceased’s assets.

To eliminate the opportunity for a surviving spouse to lay claim to assets designated to the deceased’s children, it may be necessary to create a trust or a prenuptial or postnuptial agreement.

Various trust options are available to provide for a surviving spouse throughout his or her lifetime and that also help ensure any remaining assets are left to the original asset owner’s children. Without some form of marital trust, the surviving spouse may be able to leave all remaining assets to his or her own children (from the first marriage) upon his or her death instead of the original decedent’s children.

Home Ownership

Similarly, it’s important to consider the status of the family home in the event of one spouse’s death. It is common for a married couple to own a home together with both spouses designated as joint tenants with right of survivorship. This means that when one spouse dies, full ownership transfers to the surviving spouse, who can then pass it on to whomever he or she pleases. However, if one spouse wants to ensure the home will eventually pass on to his or her children from a prior marriage, it is important to consider other title options, such as tenants-in-common. This strategy permits each spouse to leave his or her share of the home to whomever he or she wishes.
Life Insurance

Another way to help ensure heirs receive an inheritance may be to create an irrevocable life insurance trust (ILIT). This strategy assigns assets to be used to pay for life insurance premiums on a policy naming the children as beneficiaries. This enables one spouse to leave all other assets to the surviving spouse. The surviving spouse then has the right to disseminate any remaining assets to whomever he or she wants upon death, while the first-to-die spouse is assured that his or her own children will receive the insurance proceeds upon his or her death.

Don’t Assume ... Plan

“I do not think it makes sense for anyone who remarries or comes into a relationship with assets to name the spouse the sole beneficiary and assume everything will be fine.” – Suze Orman

Final Thoughts

Estate planning is generally complex, but it can be even more complex with today’s blended families. Beyond who raised whom, you also may wish to consider who is taking care of you when in the latter stages in life. For example, you may want to increase the inheritance for a child who contributes greatly to your care in old age, especially if he or she spends significantly more time and money than other heirs.

This also demonstrates the importance of communicating your wishes — and your rationale — for how you plan to transfer assets upon your death to everyone in the blended family. By explaining the difference between what is fair and what is equal, you can help avoid discord once you pass away.

It’s a good idea to consult with an experienced estate planner who can help you consider various scenarios based on your objectives to help ensure that assets are disseminated according to your wishes.
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ESTATE PLANNING FOR SECOND

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References:
3 Ibid.