

## Estate Planning for Blended Families

With the ongoing high incidence of divorce and remarriage, many clients have blended families -- that is, a family where one or both spouses have children from a previous marriage. Estate planning for blended families can present unique challenges. The interests of a current spouse and any mutual children may conflict with the desire to provide for one's children of a previous marriage.

Hopefully, the children of the prior marriage are an integral and loving part of the new family relationship, looked upon and treated by both spouses as if mutual children. However, there may be strains between the previous family and the new spouse, which could raise a number of concerns. For example, if all assets are left to the new spouse, the prior children may not be provided for as the deceased spouse would have wished, since there is no legal obligation to support stepchildren. In addition, the surviving spouse may, at his or her death, leave all the assets to his or her children, to the exclusion of the children of the first spouse to die. On the other hand, if assets are left for the prior children at the death of their parent, there may not be sufficient assets remaining to provide for the current spouse or family.

Even with a harmonious blended-family, lack of planning may lead to unforeseen difficulties. In cases where death occurs without a will or trust, statutory intestacy rules may remove from the current marriage up to two-thirds of the deceased spouse's estate and give it to the children from the previous marriage, even if the prior children are all grown and in less need of the assets than the spouse and minor children of the current marriage. If the prior children are minors, an ex-spouse may gain control of the assets. Finally, there just may not be enough assets available to adequately provide for the needs of all the members of a blended family.

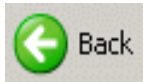
At a minimum, each spouse should have a Will. Otherwise, assets will more than likely be distributed to heirs in a manner contrary to what the deceased spouse would have wanted.

A much better approach is to use a trust to provide for the surviving spouse, and still protect a portion of the assets for the children of a prior marriage. This type of trust is known as a "Qualified Terminable Interest Property Trust", or "QTIP Trust". Property passing to a QTIP trust is eligible for the marital deduction, so the property is not taxed at the death of the deceased spouse, leaving the entire amount available for the surviving spouse's support. Such a trust can generate income for the benefit of the surviving spouse during his or her lifetime. At the death of the surviving spouse, those assets could then be distributed among the mutual and/or prior children pursuant to the wishes of the previously deceased spouse.

If the children from the previous marriage are young, after the death of the surviving spouse, the assets from the QTIP Trust can be held in a further trust for the children, under the control of an independent trustee, to ensure that the assets do not fall under the control of an ex-spouse.

It is not uncommon for a client with a much younger spouse to create benefits for the children from the prior marriage by purchasing life insurance. In such a case, rather than requiring the children to wait many years until the death of their step-parent to receive benefits, the client purchases a life insurance policy that is made payable to the children so they receive those cash benefits immediately upon the client's death. Having the policy owned by the children (or perhaps even better, by an Insurance Trust for their benefit) and funding the purchase over time by making gifts to the children or the Trust can even provide those benefits without any transfer tax!

Other techniques are also available to balance benefits passing to a new spouse with benefits for the children of a previous marriage. With careful consideration, estate planning for the blended family can provide orderly, equitable and compassionate distribution of estate assets, while also minimizing or eliminating animosity between the surviving beneficiaries.



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