

# Blended Family Estate Planning

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There are numerous challenges when dealing with succession of wealth, especially when blended families are involved. Therefore, estate planning attorneys must be mindful when preparing estate plans for blended families.

The easiest way to illustrate the issue is by recalling the marriage of Mike and Carol Brady of the Brady Bunch. When Mike and Carol married, they blended her three daughters with his three sons yet, surprisingly, there wasn't one single episode that addressed the meeting that they undoubtedly had with their estate planning attorney. If they had, my suspicion is that it went something like this:

*Estate Planning Attorney:* Hi Mike and Carol. I understand that you are here to discuss your estate plan.

*Mike:* Yes. We want to leave everything to each other, and then, when the second of the two of us passes, everything will go to the six children in equal shares.

*Estate Planning Attorney:* Are you sure that is what you want? You understand that if I draft wills for each of you which state what you want me to state, then the surviving spouse can simply change the will after the first spouse's death to disinherit their stepchildren. Additionally, you are both relatively young, and your widow(er) could remarry another person and create a whole new blended family with this new spouse.

*Mike:* That would never happen.

Carol: I trust Mike and I know he would always treat my girls the same as his boys.

Unfortunately, Carol and Mike may be wrong and it is the responsibility of the attorney to explain to clients why. First, the surviving spouse's relationship with the stepchildren could change after the first spouse's death. Second, the children of the surviving spouse could influence the surviving spouse to change his or her estate plan. Third, the surviving spouse may consume the entire inheritance for long term nursing care or just for his or her own lavish lifestyle. Fourth, the surviving spouse could remarry and write the very same type of will with their new spouse. So what should blended families consider instead?

Take Care of the Kids Immediately: Taking care of the children of the first-to-die immediately ensures that those kids will receive an inheritance and won't be selfishly longing for the accelerated death of the surviving spouse, nor will they have a reason to question how the surviving spouse is using his or her inherited assets. If there is a concern about the surviving spouse's ability to maintain his or her lifestyle, life insurance could provide a source of liquid funds.

Establish a Trust for the Surviving Spouse/Establish a Life Estate: The first-to-die could leave his or her wealth in trust, naming the surviving spouse as the lifetime beneficiary, and the children of the first-to-die as the remaindermen or surviving beneficiaries to inherit the balance of the trust when the surviving spouse passes.

Typically, these trusts are drafted in a way that ensures a stream of funds to the surviving spouse by requiring that all of the trust's income be paid to the surviving spouse. Unfortunately, this puts the remaindermen and the surviving spouse at odds regarding the manner in which the trust assets are invested. An easy way to appease both is to implement a total return unitrust ("TRU"). A TRU is a trust that is designed to distribute to the surviving spouse either a fixed amount of money or a fixed percentage of the value of the trust. This way the trustees aren't under pressure to produce income at the expense of principal growth, and it is unlikely to lead to the remaindermen questioning the investment objectives of the trustee.

Often, the largest asset is the family residence or a vacation home. In those circumstances, one of the easiest ways to ensure that the children of the first spouse to die will ultimately inherit a fair share of the property is to title the property in such a way as to provide the surviving spouse with a life estate,

while preserving for the children of the first-to-die the right to inherit the property at the second spouse's death. The first spouse to die could leave the surviving spouse with a life estate in his or her half of the house, while giving his or her own children a remainder interest in that half. While the surviving spouse is living, he or she can continue to reside in the home, rent-free. When the surviving spouse dies, the half of the house which originally belonged to the first spouse to die will be succeeded to by his or her children. Likewise, the surviving spouse could leave his or her share of the residence to his or her own children, resulting in each spouse's children receiving the inheritance, yet allowing the surviving spouse to remain secure in his or her residence.

Estate planning for blended families is complicated, and it also raises many issues which spouses may not have grappled with before the marriage. Nonetheless, it is the responsibility of the attorney who is representing the parties to raise these issues. Gary