

Planning for the Second Marriage

When one or both parties to a marriage have children from a prior marriage, the estate planning process must deal with some additional complications.

A common element of planning for couples is the desire they have to maintain control of their assets. They usually want the survivor to have maximum control. When the children are the children of both of them, they know they share a common concern for the children, and each is usually willing to let the survivor of them have complete control. However, in a second marriage situation where there are children from a prior marriage, the parent wants to assure that the interest of his or her children is protected, even if a spouse is to benefit from the parent's estate. A common concern is that the spouse will re-marry after the death of the parent and that assets will be diverted to the new marriage.

Many couples recognize this problem, but choose to trust each other to preserve their common estate plan after the death of either of them. In my experience that usually works, but sometimes it does not. One problem that sometimes arises is that the survivor of the couple is pressured by his or her children to revise the estate plan to exclude the children of the first to die, particularly if those children do not stay in touch with the survivor. Another problem is that the survivor may re-marry (which has the effect of revoking the will) and simply fail to prepare a new will.

There are three ways to protect the interests of children from a prior marriage. The simplest method is to divide the parent's estate between those children and the current spouse so that they can go their separate ways. This method is particularly useful if the parent has a large estate which can handle both obligations or if the spouse and children are close in age, so it is less probable that the children will survive the spouse. In most cases, the couple's assets are not great enough to use this method without creating risk that the surviving spouse will run out of money during his or her remaining lifetime.

A second method of protecting children from a prior marriage is to leave assets in trust to a current spouse for life with the remainder over to the children at the death of the spouse. This method ties the children to their step-parent, so it should be used where there is already a good relationship between them. Otherwise the trust can be a source of tension between them in the future. Everything taken from the trust for the surviving spouse will reduce what is left for the children in the future.

A third method is for each of you to agree to be bound by your new wills and not change them, even after the death or disability of the other. This agreement is made in a clause inserted in the will. One advantage to this relatively simple arrangement is that the survivor can use the clause to explain to children why the estate plan cannot be changed.

If you are in a subsequent marriage with children from an earlier marriage, we will need to discuss these options during our first meeting.