



5 Common Estate Planning Concerns For Your Second (or more) Marriage

With divorce occurring in roughly 50% of all marriages in the U.S. and life expectancy increasing every day, second—and even third—marriages are becoming quite common. When people get remarried in mid-life and beyond, they often bring children from prior marriages into the mix. Such unions are often referred to as a “blended” family or a “Brady Bunch” family.

But blended families can also take other forms. Whether you have stepchildren, adopted children, children from a previous relationship, or you have someone you consider “kin,” even though that individual might not be classified as your legal relative in the eyes of the law, these are also examples of a blended family.

Whenever you merge two families into one, you are naturally going to encounter some challenges and conflict. To this end, blended families present a number of particularly challenging legal and financial issues from an estate planning perspective. Indeed, though all families should have an estate plan, planning is absolutely essential for those with blended families.

If you have a blended family and something happens to you, without a carefully considered estate plan, your loved ones are at risk for significant misunderstanding and conflict. Your assets could also be tied up in court, instead of passing to those you want to receive them. Unless you are okay with setting your loved ones up for heartache, confusion, and pain when something happens to you, you need an estate plan that’s intentionally designed by an experienced lawyer (not an online document service) to keep your loved ones out of court and out of conflict.

While you should meet with us, your estate planning lawyer, to plan for your particular family situation, here are a few of the most common issues blended families should keep in mind when creating or updating their estate plan.

1. Keeping Your Assets Separate

If you get remarried and have children from a previous marriage, you need to think about how you want to balance providing for your new spouse and ensuring the children from your previous marriage receive an inheritance from you in the event of your incapacity or when you die.

If you intend to keep your assets separate so each spouse can pass an inheritance to his or her own children, you’ll need to create and maintain separate financial accounts. For instance, one



account contains the assets you want to pass on to your children, and the other can be either a separate or joint account that contains the assets you want to share with your new spouse.

Keep in mind, if you and your spouse commingle your income and assets, then the new spouse will have claim and control of those assets when you die, which can easily leave your kids with nothing. Moreover, joint accounts can be subject to claims from a former spouse and/or creditors, so unless you want your new spouse to share that risk, keep at least some of your assets separate.

If you're keeping assets separate, be sure to talk with us, your estate planning law firm, about the best ways to do that. It can get somewhat tricky, particularly when you are sharing some assets and buying new assets together with your new spouse.

2. Issues With Inheritance Timing

If you have children for whom you want to leave an inheritance, you need to consider how and when you want those assets to be passed on. For example, what would happen if you died prematurely or if your spouse is significantly younger than you? Do you want your kids to wait until your new spouse dies to receive their inheritance, or do you want them to receive it immediately following your death? Perhaps you desire to create a hybrid in which your children receive a small inheritance at the time of your death, and they receive the rest upon the death of your new spouse, which could be many years in the future.

Establishing trusts for each spouse's children can protect those assets and stipulate when the kids receive their inheritance. You may want to provide your children with some of their inheritance, such as proceeds from a life insurance policy, upon your death, and then release the rest at some point in the future. Or if your kids are very young, you may decide to leave that decision up to your spouse or a third-party successor trustee, who can better determine the most advantageous time to pass on your children's inheritance to them.

As your estate planning law firm, we will work with you, taking into account your unique family dynamics, assets, and potential areas of risk and conflict to help you determine the optimal time to pass on your wealth and other assets to your heirs to ensure it has the maximum benefit for everyone involved.

3. Carefully Consider Your Trustees

A common scenario for blended families is for one spouse to set up a revocable living trust that names themselves as the trustee during his or her lifetime, with the surviving spouse named as successor trustee once the first spouse dies. Yet, this would leave all decisions related to the trust assets to the surviving spouse, which could cause conflict with the children from your prior marriage.



For example, the new spouse may choose to invest the trust assets conservatively, ensuring he or she has enough money to live comfortably for a few decades, instead of investing the assets for growth. On the other hand, the children—particularly if they are younger—might be better off having the assets placed into higher-risk investments, which can offer better returns in the long run, but leave less income for the surviving spouse.

In this case, it could be best to name a neutral third-party as successor trustee, so both your children and surviving spouse's interests can be balanced fairly.

4. Preventing Conflict

If you are in a second (or more) marriage, with children from a prior marriage, the conflicting interests of your children and spouse can create serious strife between them in the event something happens to you. To reduce the likelihood of conflict, your estate plan needs to contain clear and unambiguous terms, spelling out the beneficiaries' exact rights, along with the rights and responsibilities of executors and/or trustees. Such precise terms help ensure all parties know exactly what you intended.

Additionally, it's essential that you meet with all affected parties within your blended family while you're still alive (and of sound mind) to clearly explain your wishes directly, if you hope for your loved ones to love each other after you are gone. Sharing your intentions and hopes for the future with your new spouse and children from a prior marriage can go a long way in preventing disagreements over your wishes for each of them.

As your estate planning law firm, we can even facilitate these meetings to help ensure your blended family maintains a harmonious relationship no matter what happens to you.

5. Planning For Incapacity

In addition to planning for your eventual death, you must also plan for your potential incapacity. In this case, you'll need to discuss how planning vehicles for your incapacity, such as a durable financial power of attorney, medical power of attorney, and a living will should be handled.

For example, if you become incapacitated, who would you want making your legal, financial, and medical decisions for you? If your children are young, it's best to leave those decisions up to your surviving spouse. However, if your children are older, you may want them included in the discussion of how such decisions will be made. You may prefer to name one of your adult children as your decision maker, or you might divide the different duties between your spouse and adult children.



Regardless of what you choose, we can help you to create an estate plan that ensures your incapacity will be managed exactly how you would want in every possible scenario.

Bringing Families Together

Along with other major life events like births, deaths, and divorce, entering into a second (or more) marriage requires you to carefully review and rework your estate plan. Updating your plan is exponentially more important when there are children involved.

As your estate planning law firm, we've been specially trained to counsel blended families on how to properly protect their assets in a manner that's best for both the spouse and any children involved. We will ensure that you and your new spouse can clearly document and communicate your wishes to avoid any confusion or conflict over how assets and/or legal agency will be managed and passed on in the event of one spouse's death or incapacity.

If you have a blended family, or are in the process of merging two families into one, sit down with us to discuss your different planning options. Contact us today to schedule your visit.

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