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For our clients' convenience,
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Yours, Mine and Ours The Importance of Estate Planning for Blended Families

Blended families, containing parents and children of previous relationships, make up an estimated forty percent of married households. With more than 50 percent of first marriages failing and 75 percent of the partners remarrying, blended families have become the norm.



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Estate planning for blended families can present unique challenges. Like a Rubik's Cube, there are many sides to blended family estate planning. If those sides don't line up properly, the best interests of all members of the new family may not be served. For example, if all assets are left to the new spouse, the deceased spouse's biological children may not be provided for

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An Existing Will

Does An Existing Will Carry Into A New Marriage? The Answer Depends...

Many couples are shocked to discover how the act of getting married affects their existing wills. Previously under Massachusetts law, marriage invalidated an existing will. This meant that if a person's will left assets to his or her children from a previous relationship, the will became null and void upon the new marriage.

As of 2011, under the new Massachusetts Uniform Probate Code, marriage causes the new

spouse to take precedence over all bequests except those to a person's children from a previous relationship.

The new law can result in a variety of unintended outcomes. For example, a couple with separate assets and established adult children might have included other relatives, friends or charities in their premarital wills. The surviving spouse

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Planning to Remarry?

Why You Should Consider a Prenuptial Agreement

Honest communication is the key first step to a successful marriage. As a couple contemplates marriage, particularly in a blended family scenario, they should give serious consideration to protecting their individual assets and respective families with a prenuptial agreement. The process of structuring a prenuptial agreement facilitates a much-needed financial discussion before the marriage.

Your Legal and Financial Rights

When two people marry, they automatically gain legal rights to each other's assets in the event of divorce or death. Even if there are already wills, trusts and other ownership arrangements in place, the legal rights of a spouse override many of these dispositions. Children's or grandchildren's inheritances could be substantially diminished.

In many cases, one or both members of a remarrying couple have assets they're bringing into the marriage that they want to protect if the marriage ends. If there are children from a previous marriage involved, safeguarding assets necessary to their education or their financial support needs to be acknowledged.

Even if an individual's net worth is equivalent to that of the future spouse, each person may have different goals in mind for their assets when it comes to spending in retirement

years, planning for long-term care costs and inheritances for respective families.

Of critical note, even the best prenuptial agreement does not protect assets from each other's long-term care/nursing home costs, so couples approaching their senior years must utilize other techniques, such as trusts and insurance, to achieve long-term care protection.

Protecting Your Children

An agreement is particularly necessary if remarrying spouses vary considerably in age - if the younger spouse is the surviving spouse, they may end up a single parent providing for an entire blended family. Also, when adult children from previous marriages are involved, the couple needs to focus closely on beneficiary issues, as the older spouse may not want his or her adult children's inheritance to be delayed until the younger spouse's death.

Older Couples

Prenuptials are especially relevant for older couples, who likely each have their own separate assets and their own children. By age 50+ they may have accumulated savings; retirement funds; ownership in, or profits from the sale of, a family business; home equity; money from a divorce settlement or inherited from a deceased spouse; or other inherited property that they wish to remain in their respective families.

Yours, Mine and Ours *Continued from page one*

as intended. The surviving spouse may, at his or her death, leave all the assets to his or her own children, to the exclusion of the children of the first spouse to die.

Providing for everyone you love can be complex. The interests of a current spouse and mutual children may conflict with the desire to provide for one's children of a previous relationship. These complexities only grow as couples reach their later years, with potential familial tensions and healthcare and medical issues added to the mix.

Couples must have an estate plan that fits their situation. Without proper planning, these families have no way of ensuring that what they expect to happen will actually happen, and the results could be disastrous.

Like any sensitive undertaking, couples with blended families must begin with an honest

conversation. The first issue for discussion is whether the couple wishes to plan together or each consult a separate attorney. While most couples opt to plan together to ensure their wishes form a cohesive end result, this should not be taken for granted by the couple or their attorney. Couples planning to marry should consider whether a prenuptial agreement is the best starting point for them to set expectations and establish a structure for how they will handle finances and estate planning dispositions.

As legal professionals in an ever changing society, we recognize the importance of addressing each family's unique circumstances with directness, but also sensitivity. Families who approach these issues head on will find that the experience is not only rewarding, but increases their peace of mind.

Checklist - Critical Estate Planning Considerations for Blended Families

There are a myriad of considerations when it comes to estate planning. Here are a few that should not be overlooked for couples with blended families:

- Meet with an estate planning attorney to discuss a prenuptial agreement.
- Create a will that reflects your wishes and best serves your children and your new spouse.
- Establish a trust to provide for a spouse, while making sure children are still benefitted in the intended manner.
- Review beneficiary designations on insurance policies, annuities, retirement accounts and pensions.
- Create a list of specific items you'd like to leave your children.
- Build in protection of future inheritances for your children (i.e., anticipate them as adults who may be dealing with their own divorces, lawsuits, bankruptcies or disabilities.)
- Consider appointing a separate guardian for your underage children, and be mindful of the role of your former spouse or partner in guardianship of your children if you pass away.
- Most spouses tend to blend their wealth. Consider the disposition of blended or joint assets if you were to predecease your new spouse, as these could be inherited by your stepchildren, or even by your new spouse's next spouse and their children.
- Be alert to tax consequences of your estate planning actions. Assets gifted to children will utilize your Federal lifetime gifting exemptions, and assets left to children upon death may result in a state or Federal estate tax payable upon your death.
- Discuss how much debt each party is bringing into the marriage and who will be responsible for the debt after you are married.
- If you have college-aged children, consider the impact of the new marriage on financial aid.
- As you age, consider long-term care insurance to ensure your respective estates are sheltered from each of your long-term care/nursing home expenses.

Unique Challenges for Same Sex Couples and Non-Marital Relationships

For the first time in American society, opposite sex married couples represent less than half of all U.S. households. Estate planning is a must for any adult, but it is particularly important for couples that are in relationships - other than traditional marriages - to understand how their situation could play out without proper estate planning.

While same-sex married couples in Massachusetts now enjoy most of the same legal and financial benefits as opposite-sex spouses, a move to a different state could disrupt many of these protections. For example, retiring to Florida, which currently does not recognize same-sex marriage, could unhinge your legal and financial planning, including the ability to share each other's government benefits.

Other non-traditional scenarios, such as unmarried cohabiting couples or later-in-life companions, also need to be addressed with a carefully designed estate plan. Unmarried partners who fail to plan will find that without a will, the surviving partner has no legal right to the other's assets and benefits, and may find themselves shut out of medical and financial decision making in the event of the partner's disability during life.

These partners should also consider setting up trusts (see article on page three) to keep assets away from probate and avoid potential challenges from family members and would-be heirs.

A Comprehensive Solution: Establishing A Trust

Throughout this newsletter we have referenced the use of a trust as a solution to many of the estate planning challenges faced by blended families and other non-traditional couples.

- For married couples, a special type of Marital Trust (known as a Qualified Terminable Interest Property - or QTIP - Trust) provides for the surviving spouse in an estate tax-efficient manner, while protecting a portion of the assets for the children of a prior relationship. This type of trust is eligible for the estate tax marital deduction, so the property is not taxed at the death of the first 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, assets can be distributed among the various children in a manner that is fair and reflects the wishes of the first-to-die spouse.

This arrangement is particularly effective for earmarking certain assets (such as one spouse's business or an inherited family vacation home) for his or her descendants, while also allowing the surviving spouse to benefit from them until his/her death.

If the children from the previous marriage are young, disabled, or simply need additional financial protection, after the death of the surviving spouse the assets can be held in a further trust for the children, under the control of an independent trustee.

- For older married couples, a variation on the

QTIP Trust that is established in each person's will - a so-called "Testamentary Trust" - accomplishes the same objectives, while also ensuring that the assets are protected from the surviving spouse's future long-term care/nursing home costs.

- A separate living trust can be used for assets that a spouse or partner wants to leave directly to his or her own children upon death. This trust can be segregated from the rest of the estate plan with particular assets designated to it through the will, beneficiary designations, or by placing assets into the trust during the owner's life.
- An Irrevocable Life Insurance Trust (ILIT) allows an individual with a younger spouse to create an inheritance for older children from a prior relationship with life insurance, and ensures the children won't have to wait many years until the death of their step-parent to receive benefits. When properly funded, the ILIT also shelters the policy benefits from federal and state estate tax.
- Irrevocable Trusts can be used to shelter assets from the long-term care/nursing home expenses of both spouses or partners. The loss of assets to the nursing home is particularly devastating when there is an expectation of leaving them to one spouse's or partner's children. Crisis planning for married couples often involves moving all assets to the "healthy" spouse, but this can be risky with blended families. Protecting key assets ahead of time in an Irrevocable Trust safeguards against these risks.

Does An Existing Will Carry Into A New Marriage?

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would trump those bequests under the new law.

For couples with younger children, the parent might have preferred that the assets go to the new spouse to manage them for the children, or the spouse might have been relying on the inheritance to continue supporting the family. However, the assets would go directly to the children under today's law.

Clearly, any couple who has gotten married should revisit their existing estate plan, but it is especially critical for couple entering the marriage with children. At a minimum, each spouse should have a will, but blended families

often find the solutions to their special planning challenges require the use of more specialized estate planning tools such as trusts that would allow the surviving spouse to benefit from the other's assets, while ensuring that upon both deaths each spouse's assets pass to their intended beneficiaries.

Note: Couples should also be aware that if they own assets jointly with another person, such as a spouse or a child, the joint owner will inherit that asset entirely upon death, regardless of what their wills or trusts provide. That is why each asset must be independently considered in the estate planning process.