

Estate planning for non-traditional families

By Linda T. Cammuso

The definition of the “typical family” has changed dramatically over the years. Non-traditional family scenarios are increasingly coming into existence, often later in one’s life. The types of families that we encounter today include second marriages in which one or both spouses have children from prior relationships — more commonly referred to as the “blended family,” unmarried partners and same-sex unions.



Legal Briefs

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.

Non-traditional couples, particularly those in their later years, should understand the forces that impact their situations such as family dynamics and tensions, financial and legal issues and healthcare and medical issues. The following is a snapshot of what could happen in certain scenarios where people have failed to plan.

Married couples in blended families face unique challenges. Common concerns include resentment on the part of children, particularly if a first marriage ended under hostile circumstances. Roadblocks may be created when it comes to making financial and healthcare decisions for an ailing spouse or parent if it is unclear who the designated decision-makers are.

The inheritance of assets can be a par-

ticularly volatile situation in the absence of a will or trust. And careless titling of assets (e.g. having a child’s name on a bank account or house) can have unforeseen outcomes. Even the decision of who to name as executor or trustee can create a dilemma. Spouses in second marriages are also frequently shocked to learn that their assets are exposed to each other’s long-term care/nursing home spend downs in the absence of proper legal planning.

Unmarried partners who fail to plan could be in for some unwelcome surprises. Without a will, the surviving partner has no legal right to the other’s assets, and lacks legal standing as an “interested person” in probate court proceedings. They may also find themselves boxed out of medical and financial decision making in the event of the partner’s disability during life.

For same-sex married couples, while MassHealth recognizes the marriage and

applies the same rules as for opposite-sex married couples, Federal law does not recognize these unions. So, corresponding Federal benefits and laws, such as the unlimited “marital deduction” for estate tax and lifetime gift planning, are not applicable to them.

Each family’s situation has its own unique and critical estate planning needs. Proper planning with a qualified attorney is essential. Protection for loved ones and family harmony is key — and estate planning is worth the effort to achieve those goals.

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