Seven Estate Planning Considerations for Blended Families

Amundsen Davis Estate Planning Alert
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Over the course of my career, I have received many calls from blended families who encounter issues after the death of a loved one. For example, following the death of her father, Mary remained close to her step-mother. Mary's step-mother eventually left the area to be closer to her biological grandchild. Following Mary's step-mother's death, Mary discovered that her step-mother had changed the terms of her father and step-mother's joint trust and disinherited Mary, leaving everything to her biological grandchild. Everything Mary's step-mother did was completely above board, she and Mary's father had signed a joint trust and as the survivor she had the power to amend and modify the trust after her husband died.

When I meet with second-marriage couples, I like to bring up the following considerations:

1. **Spouses can leave assets separate and have their own revocable trust.** Upon the death of the first spouse, a trust can be established for the benefit of the surviving spouse to provide them with income and perhaps principal. If clients want to leave assets in a trust for a surviving spouse, I always recommend two things:
    - Choose trustees carefully! The surviving spouse should NOT be the only trustee. They will have the power to withdraw all the principal potentially disinheriting children.
    - Consider giving children a bequest upon the first death. This way, if the surviving spouse needs or uses all of the trust funds after death, the children have at least received something.
2. **Make a joint trust irrevocable upon the first spouse's death**. If spouses want to sign a joint trust then the trust should be drafted so that it becomes irrevocable upon the first death. Again, it is always smart to give children from the previous relationship a bequest upon the first death.
3. **Consider opening a separate bank account.** If assets are owned jointly between spouses, I warn my clients of worst case scenarios, and encourage them to maybe open a separate bank account or brokerage account and name their children as beneficiaries.

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4. **Discuss funeral and burial plans with family proactively.** Although a difficult conversation to have, I encourage clients from blended families to discuss where they would like to be buried. Do they want to be buried with their family or former spouse? Do they want their children to decide what happens for burial or funeral? If everyone is on the same page and knows what to expect, a lot of the heartbreak and heartburn can be avoided.
5. **Consider naming your spouse and one of your children as co-attorneys in fact.** Again, make sure everyone is on the same page.
6. **Talk as a family about these issues**. Communication is key. When an estate plan comes as a surprise, or if people feel left out or betrayed, it often ends in litigation and broken families.
7. **Double check beneficiary designations!** Beneficiary designations trump a well drafted estate plan. Regardless of what a will or trust says the asset goes directly to the primary beneficiary or beneficiaries. For example, if your trust states that a particular asset, such as an IRA, is to go to your current spouse then your spouse will get it. But if you've named your child as primary beneficiary, the IRA will go to your child. Another error occurs when a person names their current spouse as primary beneficiary and the children as equal contingent beneficiaries, believing that everyone will get something. In truth, the primary beneficiary receives all the assets in this situation and will be free to act as he or she wishes. It is possible to have multiple primary beneficiaries, so to avoid potential problems you can name a spouse and children as primary beneficiaries and designate the percentage each will receive.