

# Estate Planning Considerations for Blended Families

Article

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Although blended families are common, they often encounter unique complexities after the death of a loved one. Assets may be left outright to a surviving spouse, who may then change the terms of the estate plan. Careful estate planning helps prevent disputes when emotions are high, avoids unintended disinheritance, and ensures assets are distributed according to the deceased spouse's original wishes. Couples navigating these decisions should keep the following considerations in mind:

## 1. Choose Trustees Carefully

If a trust is created to benefit a surviving spouse, it is important to consider who will serve as trustee. A thoughtfully selected trustee can help ensure the trust is administered according to the deceased spouse's intentions. An independent or corporate trustee may be an unbiased yet effective choice.

## 2. Consider an Irrevocable Trust Upon First Death

If spouses prefer to sign a joint trust, the clients should consider whether the trust will become irrevocable upon the first death. This structure can prevent unintended changes and helps protect the interests of all beneficiaries. While this structure does add some complication to the plan, it can help to ensure that the surviving spouse does not go against the decedent spouse's wishes once he or she has passed away.

For blended families, a qualified terminable interest property (QTIP) trust can provide a balanced approach to supporting a surviving spouse while protecting the inheritance of children from a prior relationship. A QTIP trust requires that the surviving spouse receives all net income, and may allow the surviving spouse to receive distributions of principal. Upon the surviving spouse's death, the remaining assets are distributed to designated beneficiaries (such as children of the first spouse to die), and typically the surviving spouse does not have the ability to modify the beneficiaries upon his or her death.

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### 3. Prenuptial Agreement or Postnuptial Agreement

It is very common for spouses in a blended family in Wisconsin to enter into a pre-nuptial agreement, especially for marriages later in life. Often those spouses have accumulated significant assets prior to the current marriage, and want to ensure that each spouse has the freedom to leave the assets he or she accumulated prior to the current marriage to his or her respective children. Since Wisconsin is a marital property state, without having a pre-nuptial agreement that supersedes the default rules, the assets accumulated prior to the marriage can end up being reclassified partially or fully as marital property. If an asset is classified as marital property, then the surviving spouse generally maintains a 50% marital property interest in the asset after the first spouse's death, and that would limit the ability of the deceased spouse to leave that asset to his or her children. A pre-nuptial or post-nuptial agreement can supersede the default Marital Property rules.

### 4. Discuss Funeral and Burial Plans Proactively

Although a difficult topic, it is important for blended families to talk openly about funeral and burial wishes. Do you want to be buried with your current spouse or your former spouse? Would you prefer that your children make these decisions? Addressing these questions in advance can prevent confusion and emotional conflict during an already difficult time. Both spouses may consider executing an authorization for final disposition. This document clarifies the decedent's wishes and leaves no room for disagreement among a surviving spouse and children from a prior relationship.

### 5. Consider Naming an Independent Agent in the Power of Attorney

When establishing powers of attorney, it may be beneficial to name an independent, neutral third party, such as a trusted advisor or professional fiduciary, as your agent. This approach can help avoid potential conflicts between family members, particularly in blended families where loyalties or expectations may differ. An independent agent can act objectively, make decisions based solely in your best interest, and provide a buffer between family dynamics and financial or medical decision-making. It is important to communicate this choice to your loved ones in advance to ensure transparency and reduce the risk of misunderstanding.

### 6. Communicate Openly With the Family

Communication is key. When provisions in an estate plan come as a surprise, or if individuals feel excluded or betrayed, it can lead to litigation and fractured relationships. Open, honest discussions can help ensure that everyone understands the intentions behind the plan.

## 7. Double-Check Beneficiary Designations

Beneficiary designations on assets such as retirement accounts and life insurance policies override the terms of a will or trust (assuming beneficiaries other than the estate or trust are named in those policies). It is essential to review these designations regularly and ensure they reflect your current wishes. For example, if your IRA lists your child as the primary beneficiary, even if your trust states that it should go to your spouse, your child will receive the asset (subject to the spouse's marital property rights, if any). You can also name multiple primary beneficiaries and allocate percentages among them to ensure fairness. It is important to note that ERISA imposes spousal consent requirements for naming persons other than the spouse as beneficiary of an employer-sponsored retirement account. If you elect to name someone other than your spouse as beneficiary on an account subject to ERISA, your spouse would need to consent to that designation.

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