

Providing for Blended Families and Domestic Partners



Subsequent marriages where either or both parties have separate assets requires careful planning to obtain the results desired. It is important to know the position of each party to avoid some of the problems that can arise in these situations, such as those illustrated in the following table.

Domestic Partnerships where the clients choose not to or cannot marry require careful planning since many laws have been written only to protect those lawfully married.

For these reasons it is important for you to clearly express your intent so that the laws in place do not overwrite your own personal wishes.

Subsequent Marriage:

Examples of Problems that Can Arise with Multiple Children/Prior Marriage

- (1) H has 3 children, W has 2 children. H dies and leaves control of all property to W. W changes terms of the trust leaving all property to her 2 children and none to H's 3 children.
- (2) H has 3 children, W has 2 children. Do they want H's 3 children to get 1/2 and W's 2 children to get the other half or do they want the total estate to be divided into 5 equal shares, one for each child.
- (3) H has 3 children from prior marriage (HA, HB and HC). W has 2 children from prior marriage (WA and WB) and together they have 1 child (T). From above examples you can see the complexity of the division. It can go several ways; for example:

I. Assume \$100 total, \$50 from H and \$50 from W:

<u>Child</u>	<u>Inherit From H</u>	<u>Inherit From W</u>	<u>Total</u>
HA	12.50		12.50
HB	12.50		12.50
HC	12.50		12.50
WA		16.67	16.67
WB		16.67	16.67
T	12.50	16.66	29.16
	<u>50.00</u>	<u>50.00</u>	<u>100.00</u>

II. Assume \$100 divided equally among 6 children = \$16.67 each.

If there is a prenuptial agreement, the trust should include the provisions of such agreement so there is no conflict between the trust agreement and the prenuptial agreement. It will be helpful if a copy of the prenuptial agreement is supplied to us.

It is important to list any on-going obligations from a prior marriage - alimony, child support, provide education, life insurance, etc. It generally will be necessary to make special provisions in the trust providing for these obligations in order to prevent legal action by a former spouse against your estate.

Problems of IRA's and Retirement Plans

If either client owns a substantial IRA or other retirement plan, special consideration should be given as to who is named as beneficiary of said plan. You should be aware that beneficiaries of your retirement proceeds are not governed by the provisions of your trust but by the beneficiary designation that you have registered with the custodian of the IRA or administrator of the plan.



It is generally better if the surviving spouse is personally named as beneficiary of an IRA or Retirement Plan since they can roll-over the proceeds and defer income taxes (if under the age of 70½). NOTE: By doing this the surviving spouse will be allocated some assets of the deceased spouse and his/her estate may have more than one half of the combined estate.

In a second marriage situation, often this may present a dilemma where a substantial part of the estate consists of such retirement funds. Since legally we cannot restrict the surviving spouse if the plan is paid to him or her, the situation of the above example may occur and the children of the first spouse to die could receive less than the share due them if the assets had been split equally between the two families.

If you want to be sure your retirement accounts ultimately go to your indicated heirs, you should each consider establishing a separate Qualified Individual Conduit (QIC) Trust in which you name your spouse as primary beneficiary of the QIC Trust so that he or she would receive the minimum required distribution over his or her life expectancy. Then upon the death of your spouse, any remaining balance of the retirement account would be paid to the beneficiaries of your own respective families.

In this way, you can be assured that your spouse will receive income from your retirement accounts upon your death, but your designated beneficiaries will be the ultimate beneficiaries of the proceeds. The drawback is that your spouse would not be able to roll over the account into his or her name and delay distributions until the spouse attains age seventy and one-half (70½) and would have to begin taking distributions in the year following the deceased spouse's death. However, there will be no penalties for withdrawing at an early age, only income taxes due.

Domestic Partners or Unmarried Couples:

When doing estate planning for couples who are not married or of the same gender, not only are the laws not very helpful, the laws may force an outcome contrary to a client's wishes. Estate planning is necessary to insure that the companion receives what you desire. Under the laws of most states, a companion is not considered a legal heir and the deceased party's blood relatives are entitled to his or her property unless written provisions are made ahead of time. This is where a good estate plan is essential. In addition to minimizing the ability of relatives from inheriting all of your estate or contesting the trust, your estate plan can deal with issues of tax laws, hospital visitation rights, and issues surrounding children.

Assets of Grantors Ultimately Distributed to Their Own Heirs.

If each of you wish to have your property ultimately distributed to your own heirs, you will need an A/B Trust so that upon the death of the first party, the trust is divided into a Survivor's Trust, which would contain the separate assets of the survivor, and a Decedent's Trust, which would contain the separate assets of the deceased party. If the survivor has complete control over the entire trust, then he or she will have the right to change the entire trust and can change the beneficiaries to exclude the deceased party's heirs entirely and leave all the assets to the survivor's heirs.

Domestic Partner Agreement

This document allows you to declare your intent to treat or to affirm the present ownership of certain property as either jointly or separately owned property. It can spell out how to treat your assets upon separation or death. Again, where married couples have certain presumed ownership rights in property, these same ownership issues must be addressed in detail in order to carry out the intent and wishes of the parties.

Statement of Authorization For Disposition of Body **Statement of Priority of Visitation Rights for Non-Spouse**

The Estate Planning Portfolio will provide a "Statement of Priority of Visitation Rights" for you to sign giving each other visitation rights to any hospital, nursing home, or other facility where you may be receiving treatment or care, as if said agent were your next of kin. It will also provide a "Statement of Authorization for Disposition of Body" which allows your agent to have control of the disposition of your remains, including the right to make a prepaid funeral agreement or pre-need funeral arrangement, or to arrange for your funeral or cremation after your death.

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