

Unintended Estate Planning Consequences in Blended Families

Being married implies that you and your spouse are a team and have common goals. However, estate planning for blended families illustrates how spouses can have conflicting interests. For instance, couples may draft wills that are essentially identical, leaving everything to each other and then to their children, if the other spouse dies first. But what happens if you have children from a previous relationship or marriage and *you* die first?

The short answer is that your children from the previous relationship may be unintentionally disinherited. Here's why: if you leave everything to your spouse and then you die first, your assets will pass to your spouse. Once your assets belong to your surviving spouse, he or she is free to leave them to whomever they want. You cannot dictate what your spouse does with those assets after your death. And just as you want to take care of your children, your spouse probably wants to take care of his or her children. In the end, that might mean your spouse's children get everything you left to your spouse, while your children get little or nothing.

There are ways to avoid this pitfall. For instance, you and your spouse can decide to divide all of your assets between your children and step children, alike. This ensures that regardless of which spouse dies first, all children will get a piece of the pie. Keep in mind that this only works if the surviving spouse doesn't change his or her will after the first spouse dies.

Another option might be leaving specific assets to certain people. For example, if you have a car you know your son would love but can't guarantee it will be left to your son upon your spouse's death, leave your son the car upon *your* death. This means your son doesn't have to wait until his stepmother or stepfather dies before he takes a gift you intended for him. You can take the same approach if, instead of a specific asset, you want to leave certain people a specific portion or percentage of your estate.

A third option or compromise involves real property. Sometimes couples live in a home that one spouse owned prior to marriage. While the spouse with the ownership interest in the home may want to ensure their spouse isn't evicted upon becoming a widow(er), they may also want their own children to inherit the home. In cases like this, you can consider giving your spouse a life estate. The basic concept is that the surviving spouse who does not have an ownership interest in the home may live in and enjoy it as their own for the rest of their life or until they decide they want to move. Upon death or vacating the home, it passes to first spouse's children, thus ensuring that the surviving spouse and the children are both cared for.

There are many other ways to address the potential estate planning problems presented by blended families. If you and your spouse plan to update your wills and believe you may have conflicting interests, start talking about your goals and possible compromises before you come to the legal office. Your will does not have to mirror your

spouse's, especially if you have a blended family. Your legal assistance attorney will work with you to make sure your estate plan accomplishes your goals.

To make an appointment to have a will prepared, either for you individually or for you and your spouse, or to talk to an attorney about estate planning, you can call the Client Services Division at 804 765 1500.