

# ESTATE PLANNING FOR SECOND MARRIAGES

Second marriages present certain problems in Estate Planning, but opportunities exist to ensure that the client's goals are achieved. Typically individuals in blended families want to provide for the spouse as well as their own children. In some, but not all, cases they also want to provide for the children from their spouse's previous marriage.

1. **Stepchildren.** A common problem in a second marriage is where one or both spouses have children from a previous marriage.
2. **Stepgrandchildren.** A second problem is families with children who are in second or subsequent marriages who have stepchildren.
3. **Are blended families common?**
  - Fifty percent of marriages end in divorce.
  - Seventy percent of remarriages end in divorce.
  - Forty-three percent of marriages are remarriages for at least one party.
  - Average duration of these marriages is 7.8 years.
  - Fifty-four percent of divorced women remarry in 5 years.
4. **Challenges.**
  - Client's children from a prior marriage can be disinherited.
  - Children of prior marriages must wait for their inheritance until after death of client's spouse.
  - Disputes over division of authority or responsibility.
5. **Solutions.**
  - **Agreements.** Premarital and marital agreements spelling out the rights and obligations of the surviving spouse in the estate of the deceased spouse.
  - **Life Estates.** Currently one spouse owns a home but wants to give the other spouse the right to live there for life, but upon the death of the surviving spouse, the client wants the home to go to his or her children. This can be accomplished by giving the surviving spouse a life estate in the home.
  - **Support Trust.** The client could establish a Support Trust indicating that the trust receive all of the income and as much principal as is necessary for health, education, maintenance and support, but on the death of the surviving spouse the remaining funds in the trust are distributed to the children of the client establishing the trust. Perhaps the most commonly used solution to the problem.
  - **Spendthrift Trust.** A trust could be established that provides for trustee discretion to make distributions for the surviving spouse and children. These distributions could be discretionary with the trustee or could be unitrust distributions. For example, a spouse may receive 4% of the total annual return on assets held in the trust, or 4% of the total trust assets as calculated on an annual basis.
  - **Life Insurance.** Life insurance can be purchased outright or by an Irrevocable Life Insurance Trust (ILIT). Insurance can be designed to provide for the surviving spouse or for the children. This could be used to ensure an inheritance for the surviving spouse or children.
  - **Contract to Make a Will.** The spouses could enter into a Contract to Make a Will. Each spouse would make a Will leaving everything to the other with remaining assets to be divided on some basis between the children from one or both families upon death of the second spouse. The Contract to Make a Will guarantees that the surviving spouse will not change his or her Will to disinherit the children or the first spouse to die.
  - **Qualified Terminable Interest Property (QTIP) Trust.** A QTIP Trust could be established whereby the surviving spouse receives all of the income and, if desirable, the Trustee could make distributions of principal exclusively to the surviving spouse. The surviving spouse has no right to direct payments from the QTIP. Upon the death of the surviving spouse assets could be distributed for the benefit of the children of the first spouse to die either outright or in Bloodline Trusts.