

Second trip down the aisle?

Update your estate plan to reflect your second marriage

If you're in a second marriage, or planning another trip down the aisle, estate planning can be complicated. You probably want to provide for your current spouse but not inadvertently benefit your former spouse. And if you have children from each marriage, juggling their interests can be a challenge.

Take inventory

Start by reviewing your current plan. Have you updated your will, trusts and beneficiary designations to name your current spouse? Keep in mind, though, that the terms of your divorce may require you to retain your former spouse as beneficiary of certain pension plans or retirement accounts.

Next, assess your financial situation and think about how you want to provide for various family members. For example, do you want to provide for all children equally? Will you favor biological children over stepchildren? Are children from the first marriage significantly older than children from the second marriage? If so, their needs likely will be different. For example, if children from the first marriage are college age, they may need more financial support than children from the current marriage. On the other hand, if your older children are financially independent adults, they may need less help than your younger children.

Be sure to discuss your plans with your current spouse and with your children from both marriages. If you decide to treat family members unequally, it's important to explain your reasoning to avoid hurt feelings or disputes over your estate.

Use trusts

Trusts generally avoid probate, so your assets can be distributed quickly and efficiently. Trusts offer flexibility to determine how and when your wealth will be shared with your beneficiaries. For example, you might establish one trust for your current spouse and his or her children and a separate trust for your children from your previous marriage.

If you leave your wealth to your current spouse outright, there's nothing to prevent him or her from spending it all or leaving it to a new spouse, effectively disinheriting your children. To avoid this result, you can design a trust that provides income for your current spouse while preserving the principal for your children.

Trusts are particularly valuable if your children from a previous marriage are minors. Generally, if you leave assets to minors outright, they must be held in a guardianship until the children reach the age of majority. It's likely that your former spouse will be appointed guardian, gaining control over your wealth. Even though your former spouse will be obligated to act in your children's best interests and will be supervised by a court, he or she will have considerable discretion over how your assets are invested and used.

To avoid this situation, consider establishing trusts for the benefit of your minor children. That way, a trustee of your choosing will manage the assets and control distributions to or on behalf of your children.

Consider the tax ramifications

A generous tax exemption (currently \$5.45 million) eliminates gift and estate taxes for many families. But if your estate is large enough to make estate taxes a concern, multiple marriages present some challenges.

An important planning tool for affluent couples is the marital deduction, which allows one spouse to transfer an unlimited amount of wealth to the other tax-free. Generally, to take advantage of the marital deduction, you must leave assets to your spouse outright. As noted above, however, there's no guarantee that your current spouse will provide for your children from a previous marriage.

One effective strategy for meeting this challenge is to set up a qualified terminable interest property ("QTIP") trust. This is an irrevocable trust that pays out all of its current income (at least annually) to your spouse and meets certain other requirements. It allows you to enjoy the benefits of the marital deduction and provide for your current spouse, while still preserving the principal of the trust for your children from a previous marriage or your current marriage (or other beneficiaries).

When you establish a QTIP trust, the marital deduction shields the trust assets from estate taxes. When your spouse dies, the assets are included in his or her estate and may be taxable depending on the size of his or her unused exemption.

Because your children won't receive their inheritance until your current spouse dies, a QTIP trust may not be the best choice if your spouse is significantly younger than you. Under those circumstances, consider other tools, such as an irrevocable life insurance trust.

Plan with care

Remarrying can complicate estate planning, especially when there are children from both marriages. To avoid unintended consequences, work with your attorney to ensure your plan reflects your wishes.

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