

Estate Planning and Remarriage: Examining Special Concerns

By Jesse H. Little, Esq.

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Increasingly commonplace, remarriage among divorcees, widows, and widowers has become an undeniable reality in the United States. As life expectancy continues to increase, individuals who were previously married are increasingly more likely to find a companion to whom they would like to become wed.

However, with remarriage comes a variety of legal issues that should be considered and addressed, and the estate planning needs of the couple are often at the top of the list in terms of import. The situation is magnified when one or both spouses have children from a prior marriage.

Despite the importance of addressing the estate planning needs and concerns of a remarried couple, the issue is often avoided for reasons that go beyond the natural reluctance to face one's mortality. The emotions and past experiences of the partners in a second marriage create a dynamic, and possibly a tension, that may not be present with a couple who has never been married before. One or both of the partners to the marriage may find themselves wondering:

- "How will bringing up the topic of our estate planning affect the stability of our marriage?"
- "Would facing our estate planning now cause me to receive less of our property in a divorce if our marriage fails?"
- "Would it be better not to bring up my desire to complete our estate planning to keep peace with my spouse and my spouse's children?"
- "How can I provide for my spouse's financial security after my death without creating conflicts with my children?"

Despite the obvious importance of these questions and others that may arise, many remarried couples find it difficult to deal openly with the issues. Ironically, however, failing to deal with these issues can result in the very problems that were originally feared. The consequences of inadequate estate planning could include, but are not limited to, unintentionally disinheriting children from a prior marriage,

unintentionally reducing a surviving spouse's share of the estate of a deceased spouse and forcing a surviving spouse to sue for his or her share of the estate of a deceased spouse.

With proper estate planning, these problems, along with any other potential inheritance issues, can be avoided.

For a couple whose assets could be subject to estate tax – currently, couples with combined assets that exceed \$7 million – proper planning will also include gift and estate tax planning and savings strategies that are consistent with the couple's non-tax goals and that can be implemented as part of the overall estate plan.

Without proper planning, a couple could lose valuable tax savings that might otherwise be available. For instance, in situations where there is a wealth disparity between the spouses, a comprehensive estate plan is often necessary to ensure that the couple fully realizes the tax planning opportunities that are afforded under current tax laws. Failure to implement proper planning could result in a substantial tax burden that could have been easily reduced.

In addition, failure to attend to how the estate will pay any taxes and the manner in which the beneficiaries will share the tax burden could result in unintended and inequitable results among the surviving spouse and other family members.

For instance, inadequate planning could result in one set of beneficiaries receiving an inheritance undiminished by estate taxes, while the inheritance of another set of beneficiaries is reduced or eliminated by the tax liability. This inequity may not be discovered until after the death of the first spouse – or, in some situations, until after the death of the second spouse – when planning options are much more limited.

Since no two blended families are alike, and since each has a unique set of goals and concerns, the estate planning issues relating to a remarried couple require solutions that are not "one size fits all." Dealing with these issues squarely and planning accordingly is the most advisable approach for a remarried couple and will ultimately improve both marital and family relations.

In addition, proactive estate planning will allow the couple to effectively structure a plan that will minimize taxes and optimize the intended disposition of their property at death.

Simply ignoring the issues and assuming that they will somehow resolve themselves will ultimately result in, at best, tension among family members, and, at worst, outright dispute and potential loss of tax savings opportunities. Remarried couples who address their planning needs are able to make reasoned decisions and execute documents, which take potential problems out of play.

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