



## Special Estate Planning Needs for Blended Families

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*Foster Swift Estate Planning Update*

November 2009

According to the 2009 edition of *Webster's New College Dictionary*, "a blended family is a social unit consisting of two previously married parents and the children of their former marriages." Wikipedia, and several other psychological, social work and family counseling trade associations find blended family preferable to the previously-used term, step family.

Blended families currently outnumber traditional nuclear families. Based on current statistics and trends, the number is growing. This creates a situation where careful estate planning is necessary to make sure that an individual's desires are carried out. Failure to plan or make appropriate changes to one's estate plan after divorce or re-marriage has resulted in many unintended situations. For example would you like your ex-spouse to inherit your house, your bank accounts or your retirement benefits? What if your father's estate wound up in the hands of your stepbrother even though dad promised everything to you?

### SCARY STATS

An estimated 50% of marriages end in divorce after an average of 11 years. A divorce may well cost over \$15,000. Costs are even higher in "custody battle" cases. Divorce will tend to reduce the standard of living of both ex-spouses. It is also one of the most stressful life experiences. When divorcing under the age of forty-five, over 75% of men and women remarry within four years. Divorced adults with children tend to remarry quicker than divorced adults without children. Statistics also tell us that approximately 70 percent of second marriages that involve stepchildren fail. Each year 1 million American children experience divorce. Half of all children born since 1970 will live in a blended family arrangement.

In addition to divorce, as we live longer, we are creating a greater pool of eligible widows and widowers to participate in "late life marriages". Late-in-life marriages present a different set of challenges. The disparity in the ages of the newly-reweds and those of their children can wreak havoc in Estate Planning! State and federal laws developed

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with only the "Ozzie and Harriet family" in mind. They were not designed around today's complex family arrangements. Even when the blended family members seem to get along, financial planning can be complicated. The potential for suspicion and fighting among siblings is exponential when one includes half-siblings and step-siblings! The problems can be so great that many simply choose to avoid addressing the issue of inheritance altogether---sometimes until it's too late. Couples planning to walk down the aisle a second time may want to take note. A prenuptial agreement may not be necessary in a traditional first marriage, but couples who have children from previous marriages and meaningful assets really need to put their financial promises in writing before they tie the knot!

### **THE DIFFICULT "BALANCING ACT"**

Too little attention is paid to the Estate Planning challenges of blended families. These challenges include disinheriting your ex-spouse, protecting your own children, providing for your new spouse, being fair with the children of your new spouse. Overlay tax savings on top of everything else, and you surely can see the potential for frustration. Common issues involve the level of protection and sharing between the spouses, as compared to how to best handle the assets intended for the biological children. It's a delicate balancing act!

### **YOUR EX-SPOUSE**

Will your ex-spouse inherit any of your money, even if Michigan law automatically extinguishes their interest in your assets? It depends. While David was married to his ex-wife, he designated her as the beneficiary of his life insurance policy and the pension plan which was provided by his employer. Shortly after they divorced, and before David acted to adjust his planning, he died. His biological children filed suit against his ex-wife in state court to recover the insurance proceeds and pension plan benefits. They relied on a state statute, common in most jurisdictions, which provided that the designation of a spouse as the beneficiary of a non-probate asset--defined to include a life insurance policy or employee benefit plan--would be revoked automatically upon divorce. The children also argued that in the absence of a qualified named beneficiary, the proceeds would pass to them as David's heirs under state law. The courts, after a lengthy and expensive legal battle, concluded that the insurance policy should be administered and distributed in accordance with Federal Law, and granted the ex-wife judgment. This case was upheld by the US Supreme Court, and remains the law of the land.

In addition to the problems raised by David's case, without proper legal planning, your ex-spouse (as surviving parent/guardian) would, likely, be appointed by the probate court to manage the inheritance you might leave to your minor children. To make matters worse, what if one of your children should later predecease your ex-spouse? Who will inherit your assets if he or she is single and childless at that time? You won't like the answer! It's your ex-spouse, as the next-of-kin of your deceased child!

### **YOUR NEW SPOUSE**

In the absence of a prenuptial agreement to maintain separate assets, most spouses in blended families tend to also "blend" their wealth. They do not stop to consider how very different their "family" may be, from a legal perspective, than that of the traditional family. In an effort to avoid perceived complexity and expense,



they commonly title their respective assets in the names of both spouses and also designate one another as the primary beneficiary of their respective retirement plans and life insurance policies. **Warning: If you predecease your new spouse, then you may forever disinherit your own children!**

Upon the death of your new spouse, the assets that you have “blended” will, in all likelihood, be inherited by your stepchildren, or even by your new spouse’s next spouse and their children!

### **YOUR NEW SPOUSE’S CHILDREN**

In cases where one spouse has significantly greater wealth, it will be important to discuss openly and responsibly what, if anything, the estate planning documents of the propertied spouse will provide for the children of the non-propertied spouse. This will often vary, depending upon the length of the marriage. There is no “right” or “wrong” answer. The only critical mistake is to fail to address the question all together!

### **ESTATE TAXES**

Aside from disinheriting your own children, blending your wealth with your new spouse may unnecessarily enrich the IRS. How? The Internal Revenue Code provides an exemption to each taxpayer for purposes of sheltering a certain dollar value from estate taxes. However, this is a use it or lose it exemption and you lose it when title to your blended assets vests in your new spouse upon your death. In addition to disinheriting your own children, this mistake alone can trigger hundreds of thousands of dollars in unnecessary estate taxes!

### **SOLUTIONS**

If you want to disinherit your ex-spouse, protect your own children, provide for your new spouse and children, as well as minimize your estate taxes, you need to make a proper Estate Plan now.

You may also want to consider a prenuptial or post-nuptial agreement. These documents can spell out who will be responsible for which expenses after a marriage. They also can declare where each spouse's assets will go, after death or divorce. Your prenuptial might put a limit on what will go to your new spouse. Such a provision may protect some of your assets, for yourself and for children from a prior marriage.

You should also carefully craft a Trust to administer the inheritance for your new spouse and your children, appointing a party of your own selection to serve as trustee. That way, even if your children reside with your ex-spouse, your trustee will control the inheritance through the Trust and ensure its use only for your children. Regarding your new spouse, you may wish to create a Qualified Terminable Interest Property Trust (QTIP Trust) to provide income and principal (under certain conditions) to your new spouse during his or her lifetime. An arrangement of this type will protect a base of support for your new spouse, even in the event of a subsequent remarriage and divorce. Upon the subsequent death of your new spouse, the remainder of the QTIP Trust may pass to the Trust you had created for your own children upon your death.