

PlanningMatters



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Estate Planning Considerations for Blended Families.

Family dynamics and estate planning options.

Estate planning is never simple, however it becomes increasingly multifaceted when you combine biological children, stepchildren, previous spouses and other extended family members into the arena. This is what we mean by blended families.

Estate planning for couples with blended families can be complex

due to sensitive family dynamics and different objectives. Estate plans can be thwarted and family disputes can ensue where these dynamics and differences are ignored. Building safeguards into the estate plan can help to minimize disputes and ensure the couples' objectives are fulfilled.

“ Many planning options that may be appropriate in the nuclear non-blended family context are not always appropriate in the blended family context. ”

Margaret O'Sullivan
O'Sullivan Estate Lawyers

A common objective for blended family spouses is ensuring children from prior marriages and relationships are all provided for on death. Leaving one's entire estate to a second spouse outright is often problematic because he or she could later alter his or her will to remove the deceased spouse's children as beneficiaries. There are a few approaches that can be used to reduce the possibility of such an outcome and provide for capital succession to children of prior marriages and relationships.

A pre-nuptial agreement should always be considered in the blended family context. Where the agreement specifies each spouse's specific entitlements on death, planning for other beneficiaries, such as children from prior marriages and relationships, often becomes less complicated and is liberalized if the agreement releases claims on death by the surviving spouse, including for equalization of property and support from the estate.

Spouses can contractually agree not to alter or revoke their wills at any time without the consent of the other spouse (often referred to as mutual wills). This approach, though, has its own set of risks and problems. For instance, a surviving spouse could deplete the assets of the deceased spouse's estate, thereby leaving little or no assets for the deceased spouse's children. As well, while the courts have upheld mutual wills in a few cases, the approach is still largely untested.

"The safer approach involves incorporating a testamentary spousal trust and/or family trust or possibly an inter vivos trust into the estate plan".

Restrictions would need to be placed on the trust to ensure capital succession to children, while at the same time providing for the current needs of the surviving spouse. The restrictions can be tailored to address each particular situation, taking into account the spouse and other beneficiaries' needs and ages, and family dynamics.

Consideration of family dynamics is critical when appointing executors and trustees, as well as attorneys for property and personal care. For instance, where a spouse and the other spouse's children do not get along (which may not always be readily apparent), disputes can erupt if they are appointed together. As well, their economic interests often conflict which creates an inherent tension – the surviving spouse, as an income beneficiary, often prefers for the trust to hold income-producing assets, such as bonds or high dividend paying stocks, while the children, as the capital beneficiaries, prefer capital growth assets and therefore favour a greater equity allocation.

It may be preferable to instead appoint independent trustees (such as mutual friends, advisors, and professional trustees) to act alone or with the spouse and/or children. Failing to appoint the appropriate mix of trustees can also defeat an estate plan, such as where a trust is controlled by one or more of the beneficiaries acting as trustees and the trust provides broad capital encroachment powers, including in favour of themselves. In appointing executors and trustees, it is extremely important to be mindful that relationships between blended family members may not always be as strong as they appear and can sometimes change after death of a spouse.



Special considerations also apply when planning for property that passes outside of an estate, such as jointly-owned property, retirement plans, and life insurance policies. It may be problematic, for example, to own property jointly with a right of survivorship because such property would pass outside of the deceased spouse's estate directly to the surviving spouse without restriction. A careful balancing of all factors, including tax considerations, is important.

Consideration should also be given to the use of insurance as a way to sever the interests of a spouse and children of a prior marriage or relationship from the estate and provide liquidity to benefit them. Life insurance is especially useful where spouses do not wish to enter into a mutual wills agreement or use a trust.

Planning for blended families includes its own special set of considerations. Many planning options that may be appropriate in the nuclear non-blended family context are not always appropriate in the blended family context. It is important that each situation be carefully assessed and appropriate safeguards be creatively incorporated into the estate plan with proper professional advice to minimize the possibility of family discord and the estate plan being defeated.

About the authors

Margaret O'Sullivan and Christopher Kostoff's practices involve all aspects of private client work, including estate planning; will and trust planning; incapacity planning; dispute resolution; advising executors, trustees and beneficiaries and administration of estates and trusts. O'Sullivan Estate Lawyers is a boutique trust and estate law firm which provides trust and estate legal services to clients resident both in and outside Ontario with a focus on domestic high-net worth, cross-border, and multijurisdictional planning.

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