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Estate Planning
Special Needs Planning

Newsletter



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Blended Families Require Special Estate Planning

If you are part of a blended family, then you may need to do some special estate planning to ensure that your personal goals are met.

A blended family is one where either spouse has children from a prior marriage or relationship. Blended families raise estate planning issues because of the need to balance responsibilities to the current spouse, as well as to the children from the prior relationship.

Without special planning, you may find that you goals are not being met.

For example, in Virginia, where a person is married, but has children from a prior relationship, and that person dies without a will, then one-third of the estate passes to the current spouse, and two-thirds are split among all of the decedent's children. Notice, by the way, that I specifically said "prior relationship," and not "prior marriage." That is in recognition that the law protects illegitimate children as much as legitimate children.

This default estate plan, which is called the law of intestacy, may cause some problems for your surviving loved ones. For example, if you have children from a prior marriage, but they are adults, and your current spouse depends on your income and property, the law of intestacy works against your current spouse.

The solution is to carefully think about your family responsibilities and your estate plan goals, talk about them with your spouse, and work with an estate planning attorney to make your goals happen. Here are some tips on how you may be able to achieve your estate planning goals.

William J. Kovatch, Jr., Attorney at Law, PLLC provides elder law services. The practice of elder law includes the representation of the elderly and the disabled in connection with:

- estate planning (wills and trusts)
- estate administration
- the application for public benefits such as Medicaid
- advance medical directives
- the creation of powers of attorney
- guardianship
- conservatorship,
- disability planning
- long-term care planning.

William J. Kovatch, Jr. is a member of the National Academy of Elder Law Attorneys, and admitted to practice law in:

- The District of Columbia
- New Jersey
- New York
- Pennsylvania
- Virginia

Communicate with Your Spouse

The first step is to make sure that you and your spouse are on the same page. Talk openly about your responsibilities to your children from your prior relationship. Talk about your expectations for any children you may have in your current marriage. Talk about what property rights you have, and how you expect to dispose of those rights on your death.

Conclude a Prenuptial or Marital Agreement

Once you and your current spouse (or, ideally your future spouse) have discussed your respective responsibilities, you should come to an understanding concerning your property. Formalize that understanding with a prenuptial agreement (before the wedding) or marital agreement (after the wedding). In Virginia, a marital agreement is just as valid as a prenuptial agreement.

Many people will resist prenuptial agreements with their future spouses. Some view them as merely planning for an eventual divorce. Some of your friends, or even misinformed attorneys may echo that thought.

A prenuptial or marital agreement, however, is not simply planning for an eventual divorce. Rather, it can be a tool to start the conversation about property and expectations. It can be an opportunity to clarify estate planning goals. Formalizing the expectations in a written agreement can avoid confusion and misunderstandings later in the marriage.

For example, if both spouses are coming into a marriage with their own property, it could be that neither spouse would be dependent on the property of the other after one passes away. In such a situation, the spouses may agree to waive any interest in each other's estate plan, in order to permit the other spouse to address other family responsibilities.

Or, it could be that your spouse is dependent on your income and property. But, to fulfill family obligations, you may want to take care of your spouse for life, and have your property pass to your family upon her death. This can be addressed in a prenuptial or marital agreement.

Put Your Plan into Action

Finally, you need to develop the tools to put your plan into action. The tools could involve a trust to benefit your spouse during her life, but then pass the property to your children on her death. The tools could involve life insurance, and properly structuring the life insurance. These are all issues you should address with your estate planning attorney and other professionals, such as an accountant and financial advisor.

With proper communication and planning, you can balance your family obligations, and manage the expectations of your loved ones. ■

This newsletter is for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.