

# Estate Planning Ideas for Divorced or Remarried Families

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As parents, you have tried to plan for every contingency when your children are minors. As they move into adulthood, you owe it to your children to plan for those contingencies that come later in life. That is why an up-to-date estate plan should be at the top of your to-do list. Of course, the younger your children are, the more imperative this becomes.

In the age of divorce, remarriage and blended families, parents who are divorced or remarried have an even greater need for estate planning and potentially more difficult challenges to overcome. There are several unwelcome possibilities that your family could face should you die without a carefully thought out estate plan in place.

When dealing with divorce and remarriage, there are several issues or questions that every family needs to address.

## **Who will serve as the Guardian and Conservator?**

The guardian is the court appointed individual that takes care of minor children and makes sure they are physically taken care of until they are 18 years of age. The conservator is the court appointed financial agent that oversees the money that minor children inherit. If you are divorced and your children are minors, who will manage your children's inheritance? If you die, are you comfortable having your ex-spouse manage your child's inheritance until the child turns 18? For couples that have suffered through a difficult divorce, the mere thought of giving your ex-spouse control over your assets is not acceptable. You may have reason to believe that your ex-spouse may not manage the money properly or that your children will not enjoy the full benefit of the money you leave them.

If you die without an estate plan, you are not only leaving the court with the decision of who should be in charge of your children's money, you may also give the probate court control over who serves as their guardian. In most situations, the probate court can only control the assets until the child's 18<sup>th</sup> birthday. Until a child is 18, the court appointed conservator will manage that money. At age 18, the child will legally be entitled to full control of the remaining funds. When deciding whether an estate plan is important, ask yourself if an 18 year old is mature enough to manage the money you plan on leaving them.

In addition to deciding who will oversee your children's inheritance, it is also important to decide who will serve as the guardian of your minor child. Although this typically only becomes a concern when both biological parents are deceased, it is an important issue to address. In many situations, one of the biological parents may not have any involvement with the children (deadbeat parent) and it is important as the full time custodial parent that you identify for the court who you would choose to care for a minor child full-time. You may even want to be so bold as to say why the deadbeat parent should not be allowed to act as guardian or conservator (drug issues, back child support, incarcerated, criminal record, mental issues, etc). There may be ulterior motives to get control of

your children's inheritance.

Without a Last Will and Testament in place to designate a legal guardian, the court will entertain requests made by family. The person that steps forward and petitions for this role as guardian may not be the person you would have chosen. However, when you don't put your wishes in writing, it basically sends a message to the probate court that you just don't care.

## **Dying Without an Estate Plan**

If you die without any estate plan, you have relinquished authority over distribution of your estate and you have left the decision to the probate court. The rules of distribution vary from state to state, but they are called the same thing everywhere...dying intestate. Each state has their own predetermined formula and this formula dictates how your estate will be divided up.

For many parents, the probate court's distribution plan may be worlds apart from how the parents would distribute their assets. For a lot of families that have experienced divorce or remarriage, there are several tough issues that need to be addressed:

For instance, most parents may determine that younger children with college still ahead of them may need a greater share of the estate than grown children living out on their own. In a second marriage, you may need to take into account children of a first marriage as well as children of a second marriage. With divorce and remarriage issues, you may also need to take into account the level of support you need to give children in relation to a new spouse. A new spouse may have greater support needs than your adult children from a previous marriage.

The point is that you, not the State of Michigan or the probate court, are in a better position to decide how your estate should be divided among your loved ones. Unfortunately, just thinking about it is not enough. You have to take the active step of setting up an estate plan or your wishes will die with you.

## **Dying with a Simple Will...Exposure to Probate**

Although dying intestate should not be the estate plan of choice, setting up a simple Last Will and Testament may not give you the results you want at the time of death. Even though the appointment of a guardian cannot escape the involvement of the probate court, the control and distribution of your assets at death does not have to be part of the probate process if you have set up a Living Trust. Probate is required when an individual dies and leaves assets in his or her individual name not in Trust.

Keep in mind that a Last Will and Testament is merely a guideline for the probate court. It gives the court direction on who you want to be in charge (the personal representative or the executor) and it directs the division of assets. However, the transfer of all individually owned assets, such as bank accounts, real estate and personal property, are controlled by the probate court procedure.

## **The Revocable Living Trust**

The Revocable Trust, unlike a Will, allows you to avoid probate. With probate comes the potential for delay, expense and public exposure. With a Trust, your designated Successor Trustee assumes responsibility for management and distribution of your assets. Your Trustee will follow the directions you have provided in your Trust documents, including who is to inherit from you, restrictions and/or ages of distribution.

You may decide, for instance, that your minor children should receive regular distributions for education, maintenance, health care or other essential expenses. Or you can instruct your Trustee to provide lump sums to your children after they achieve certain milestones -- such as an attained age or a major event like college graduation, marriage or a new baby. Your Trust may give income to a new spouse for life, with the balance going to children of your first marriage at the second spouse's death. The point is, you have complete discretion and control as to how and when your money is distributed.

## **Updating Beneficiaries**

After you divorce, remember to update your beneficiary designations on such financial instruments as your life insurance policies and retirement accounts. A word of caution! Check your divorce decree first. You may be obligated by the Judgment of Divorce to name your ex-spouse as a beneficiary for a specific amount of life insurance proceeds. In addition, your ex-spouse may be entitled to a portion of retirement benefits accrued while you were married.

## **Ownership of Property**

Many remarried individuals don't think twice about owning property in joint tenancy with their new spouse. It's an automatic reflex to put both your name and your spouse's name as joint owners on the title of a new home, autos, and cash accounts. Unfortunately, when you do that, you may be disinheriting your children from a previous marriage.

Joint tenancy -- more accurately called joint *tenancy with rights of survivorship* -- means that when a joint owners dies, the surviving owner inherits the deceased owner's portion. The joint assets become the sole property of the surviving spouse and these assets are not controlled by your Will or your Trust. Once again, you need to do some careful planning or you could disinherit some of your loved ones.

## **Essential Estate Planning Strategies for Parents**

Fortunately, all the problems described above can be neatly countered with a well designed estate plan that addresses your concerns for your children and your new spouse. For most families, the estate planning issues of greatest concern are: 1) controlling to whom, when and how their assets are distributed after death; 2) providing for blended families; 3) avoiding probate and 4) controlling funds for minor or spendthrift children.