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*Estate, Trust, Tax and
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**"Accumulating wealth is one thing. Preserving it is another.
Let our family help yours."**

Special Report

Blended Families – A Planning Dilemma

We believe the institution of marriage is a good one. Many of our clients are involved in a second or later marriage. Often one or both spouses have children from their first marriage. Sometimes they have additional children together. These complex families are often called "blended families." In many blended families the distribution of assets upon the death of the second to die of the couple works without a hitch and there is no conflict amongst the family members. However, this is not always the case.

Lies we often tell ourselves:

1. My spouse, if he or she survives me, will do "the right thing" after I die and share the assets he or she owns with my children. As time passes after the death of a spouse in a second marriage the survivor and the children of the survivor tend to lose contact with the children of the first to die and naturally begin to think about passing along wealth to the survivor's own blood line. It is not uncommon for a surviving spouse to change his/her estate plan.

Additionally, there is also the possibility the surviving spouse will remarry again. If this happens the new spouse and his/her children can be added to the complex mix.

2. My kids won't fight over the money, if I leave it all to my spouse. They have told me they don't care what I do with my money. Although your kids will tell you it is not about the money, we find children often fight with their stepparents over money as well as personal property such as house-hold goods and jewelry. Sometimes even a good relationship with a stepparent can deteriorate overtime. A distribution to a stepparent is often viewed as a disinheritance.

3. I don't need to redo my estate plan. Everyone knows what I want to happen. If you have a will or trust drawn up before your marriage, get it updated. If you don't have an estate plan at all —

Colorado does not recognize verbal wills, so get it in writing. Dying without an up to date will or a trust that outlines exactly how you wish to distribute your estate assets is risky. Put your plan in place to ensure your spouse and your children from a prior relationship receive what you want them to receive.

How to plan for success:

1. Pre-nuptial or marital agreements. These agreements are the best way to avoid a family conflict. A well-prepared agreement will prevent a surviving spouse electing against the will of the first to die as well as waive certain statutory rights the survivor may have against the estate of the first to die. Such agreements can be used to define the rules which everyone must adhere to in the event of death (or in the event of divorce). Even after you are married you can enter into such an agreement (a marital agreement) and such agreements don't have to be done in a confrontational way. They work best when they protect the interests of both parties.

To enter into such an agreement and make it valid it is important each party is represented by separate legal counsel and there must be full disclosure of the assets owned by each party.

Just because you have such an agreement, it does not mean you cannot leave more to the surviving spouse. The agreement simply sets forth the minimum required distributions.

2. Leave assets to the surviving spouse in trust and not outright. You can direct a portion or all of your estate to a trust giving your surviving spouse a right to the income and principal of the trust on terms you select ensuring whatever is left in the trust then passes to your children. Trusts are very flexible. This is a great way to protect your spouse and your kids. A trust can create security for your spouse and ensure the eventual disposition of your estate is made in accordance with your wishes.

3. Avoid certain non-probate accounts. If you own assets in joint tenancy, upon death of either spouse the assets (which could be a residence or joint bank account) will pass to the surviving joint tenant (the surviving spouse) and the terms of your will or trust may be defeated. This applies in the case of beneficiary designations for life insurance and retirement accounts as well. Be careful when using non-probate account transfers!

4. If you are thinking about a second marriage, give consideration to not getting married and instead using a co-habitation or "beneficiary designation" agreement. These types of arrangements are a good option for many couples. With such agreements you can set forth the obligations each party has toward the expenses of the "household", delineate the marital status to avoid "common law" marriage allegations, and make provisions regarding distributions upon death. Beneficiary designation agreements allow a couple to sign an agreement setting forth their desires regarding beneficiary designations on retirement accounts, life insurance plans, annuities, etc. and also a variety of rights which non-married couples did not previously have. The new rights which can be designated include the right to visit in hospitals or nursing homes, direct the disposition of last remains and others.

5. Communicate with your children and heirs as to the expectations you have for them and why the estate plan you have may provide for a new spouse. This is a good way to ensure your heirs view your plan as being just that ----- your plan and not the plan of your spouse or stepchildren. Explaining the plan and your intentions will go a long way to ensure your family will follow your wishes even if they don't like it.

6. Include a "no contest" clause. Such a clause is intended to avoid a contest of your written estate plan by disinheriting anyone who contests the plan you have put in place.

Bottom Line – Put your plan in place now to document and safeguard your wishes, so you can be certain the objectives of your estate plan are fulfilled. Don't rely on your old will to handle these new (and often wonderful!) complications.