Estate Planning for Blended Families

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An estate plan is especially important to have if you are in a second or third marriage, or if your family includes stepchildren and children from prior relationships. Without documents specifically crafted for your family, your estate plan (or lack thereof) may result in unintended consequences.

Many people believe that a will governs the distribution of all their assets upon death, but that is not true. Upon death, there are three types of assets that avoid probate (i.e., are distributed "outside of the will"): (1) jointly-owned assets pass to the surviving joint owner(s); (2) assets with beneficiary designations (e.g., IRAs, life insurance, payable-on-death accounts) pass directly to the beneficiary(ies) named; and (3) assets held in a trust pass to the beneficiaries named in the trust. After a remarriage or divorce, it is important to review titling of assets and beneficiary designations to make sure they reflect your current wishes.

A trust can balance providing for your spouse while preserving an inheritance for your children. A trust can have a couple of stages upon your death, one stage during the surviving spouse's lifetime, and one stage upon the surviving spouse's death. The trustee has an obligation to balance the needs of both current beneficiaries (e.g., your spouse) and future beneficiaries (e.g., your children), and must preserve some assets for your children.

A will is still an important document to have though. Under Massachusetts law, if you die without a will and either you or your spouse has children from a prior relationship, the spouse receives only the first $100,000 plus half the balance; your children receive the rest. This can force step-relatives into uncomfortable shared ownership. A will makes your wishes clear.

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Incapacity planning is just as important as planning for after death. A durable power of attorney names a trusted person to handle your finances, and a healthcare proxy names someone to make medical decisions if you cannot. In blended families, clearly naming these agents prevents painful disputes between a spouse and adult children from a prior marriage.

Every blended family is different, and a plan that works for one family may not suit another. An experienced estate planning attorney can help you design a strategy tailored to your family's specific needs. If it has been a while since you reviewed your estate plan—or if you have never made one—now is the time to start.