

Blended Families Face Unique Estate Planning Challenges

Most married people I have encountered want to leave their entire estate to their spouse. In a first marriage situation, this is almost always the case. But not everyone who is married is in a first marriage. There are plenty of people around who are in their second or sometimes third marriage. It is not unusual in such situations that there may be children—quite possibly adult children—from one of those prior relationships. Nor is it unusual given the stage of life that many second or subsequent marriages occur for one or often both of the parties to have built up a considerable amount of wealth. Where this is the case, estate planning is not necessarily as simple as leaving everything to the surviving spouse. How then do blended families go about estate planning?

Estate planning for blended families can be tricky. It forces the person in a second marriage or common law relationships to articulate some things that may be difficult to admit, namely that he or she wishes to leave the bulk of their wealth to their children, possibly to the exclusion of their new partner. Some people in a relationship are able to have these frank discussions with their new partners. Others aren't. That's where it gets tricky. It calls for some family diplomacy, and not all of us are born diplomats.

Then there are some tricky legal principles to work around as well. A person in Alberta has an obligation to make adequate provision for their spouse or common law partner at death. What is 'adequate' will vary and will depend on the individual circumstances. One of those circumstances is to determine what the surviving spouse would have received had they divorced their partner the day before they died. Other factors also come into play such as the length of the relationship, the degree of financial independence between the parties, and what understandings the parties had between themselves as to how they would take care of each other at death. And unlike prenuptial agreements that set out how property is to be divided on a divorce, agreements that purport to waive any claims a surviving spouse may have to challenge an estate are not enforceable. Nor, it would seem, are such agreements entirely irrelevant. Confusing, I know.

Competing with the possible claims by a surviving spouse or common law partner are the obligations a person has towards their minor children who may or may not be born of the relationship the person is presently in. Also, if a person has any adult children who, by reason of physical or mental disability, are unable to earn a living, a person has legal obligations at death towards those children as well. A person in Alberta has no legal obligation to provide for their adult children who are capable of earning a living.

Then there are the tax consequences too keep in mind. Spouses and common law partners enjoy preferred treatment under the Income Tax Act. Taxes on RRIFs and RRSPs, and capital gains taxes that would otherwise be due at death can be deferred if the assets giving rise to the taxes are left to the surviving

spouse or common law partner. Not so with most gifts left to children. As much as you might want to leave your wealth to your children from your first marriage, doing so might mean a major tax hit. Leaving your wealth to your new spouse must mean some substantial tax savings, but do you trust your new spouse to take care of your children once they pass away? Can you have a frank discussion like this with your new partner without jeopardizing the relationship? More of that family diplomacy stuff.

Blended families pose definite estate planning challenges. If you are in a blended family, consider getting proper advice to assist you with your estate planning needs.