

## Remarriage: Bay Area Blended Families and the Importance of Estate Planning

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In my many years as an [estate planning attorney in the Palo Alto](#), Stanford, Silicon Valley, and San Francisco Bay areas, I have seen my share of family squabbles between children of the deceased by marriage #1 and the current spouse and children of the deceased by marriage #2, 3, or 4 because of non-existent, outdated, or insufficient estate planning. If you have children from your current marriage and your former marriage, not having an estate plan is truly a disservice to your family.

### **A current estate plan is essential**

The combination of a 50% divorce rate and people living longer has made remarriage more and more common. Many people make the mistake of not planning for their deaths because the relationship between the members of their blended family is so good. Unfortunately, death tends to bring out the worst in people. Therefore, if you have children from a former marriage and also with your present spouse, having a current estate plan is arguably the best way to minimize familial conflict after you die.

### **Estate Planning Options for Blended Families**

Estate planning is a method for establishing long-term goals for the growth, management, and [distribution of your wealth and assets](#) upon your death. A well-formulated estate plan affords maximum [asset protection](#) and minimum tax exposure.

Wills – A simple will is not sufficient if you have a blended family. Most simple wills assume that both parties have only been married to each other and have children only with one another. Additionally, a simple will assumes that at death, each spouse desires to bequeath his or her assets to the surviving spouse and their children, with no provisions for former spouses and children from prior marriages.

To avoid the problems that can arise by using a simple will when you are remarried and have children and stepchildren you may wish to provide for, you need to have a will drafted that specifically addresses your family structure and your wishes for taking care of your spouse, former spouse, children, and stepchildren, as the case may be. A well-written will clearly and definitively sets forth your wishes so as to avoid conflict and misunderstandings.

QTIP Trusts – Upon your death, a Qualified Terminable Interest Property (QTIP) Trust gives your surviving spouse limited access to your assets during his or her lifetime while ensuring that the remaining assets in the trust are distributed to your children from a prior marriage upon your spouse's death. The requirements for a QTIP trust are:

- Creation of the trust for your spouse;
- Use of trust assets for the sole benefit of surviving spouse during his or her lifetime;
- Entitlement of surviving spouse to 100% of income from trust assets, payable at least once per year; and
- Irrevocable election by your executor to treat trust assets as “qualified terminable interest property”

Life Insurance – If you wish to leave the bulk of your estate to your current spouse, consider purchasing a life insurance policy and naming the children from your former marriage as the beneficiaries.

Why? For several reasons.

- First, your children receive “something” at the time of your death; they don't have to wait until the “wicked stepparent” dies to receive their inheritance.
- Secondly, they don't have to worry that the “wicked stepparent” will spend all the assets and leave them nothing.
- And third, if you tell them that this is all they should expect (and that it's up to your spouse whether to leave them more or not), it reduces the tension considerably.

Living Trusts – A living trust is also an option if your spouse needs your assets to maintain his or her standard of living. A living trust allows your spouse to have continued access to your assets during his or her lifetime. Upon your spouse's death, the assets will go to your children or your other designated beneficiaries.

### **Planning to Create an Estate Plan**

Because remarriage estate planning can be a very emotional process, I advise my clients to take the following steps before beginning the estate planning process:

- List your assets and debts;
- Decide which spouse will be responsible for paying which debts;

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- Decide how you wish your assets to be divided between children and stepchildren;
- Review your life insurance policies and update the beneficiaries, if necessary;
- Share the terms of your divorce decrees with one another to avoid any surprises;
- Discuss your estate planning goals in general terms with your children and stepchildren

## Next steps

Once you've completed these steps, you are ready to [meet with an estate planning attorney](#) to formalize your estate plan. If you live in Atherton, Menlo Park, Stanford, Palo Alto, or the San Francisco Bay area, contact the Law Offices of Janet Brewer for all of your estate planning needs. Janet has extensive experience in drafting complex estate plans for mid to high net worth clients in traditional, non-traditional, and blended family situations.

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