

WILLS, TRUSTS & ESTATES: PLAIN AND SIMPLE

Estate Planning for the Second Marriage: “Protecting” the Kids

What is one of the things that kids from a first marriage worry about when their parent re-marries? The “evil” step-parent getting it all, of course. Many parents struggle with the problem of alleviating the fears of their children in this regard. There are steps you can take to ease their minds and your own.

If you enter into a pre-nuptial agreement prior to re-marrying, in which both spouses waive their rights under the law to receive a portion of the other spouse’s estate upon death, you may have already addressed these issues. If you have not, you may wish to consider a postnuptial agreement, providing the same waiver. With this agreement in place, you could leave a significant portion or all of your assets to your children. Even if it’s not possible to obtain such an agreement, there are alternatives to effect your wishes.

Absent an agreement to the contrary, spouses have the right under New York law to receive one-third of the deceased spouse’s estate outright. One way to make sure your children will eventually benefit from your accumulation of wealth is to create a marital trust (technically called a “Qualified Terminable Interest Property Trust”, or “QTIP”). The trust’s terms provide that all ordinary income earned by the trust (that includes interest and dividends, but not capital gains) must be paid annually to the surviving spouse, and then at the surviving spouse’s death, the balance remaining in the trust at that time must be paid to your children (preferably in further trust, or outright). The trust can also give the trustee the flexibility to make payments to the spouse from the principal of the trust, in the event he/she needs additional funds for certain specified purposes. This is sometimes enough to stop a surviving spouse from electing against a Will. Remember, however, that the surviving spouse is still entitled to one-third of your estate outright and can “elect against the Will” to get it. In that case, the spouse gets one-third outright and the balance passes to the children, as set forth in the Will.

Another way to protect your children, and ease your and their minds, would be to create a lifetime trust for the benefit of your children, funded with life insurance on your life (an Irrevocable Life Insurance Trust, or “ILIT”). Structured properly, upon your death, the insurance proceeds can pass to your children (in further trust or outright) free of any estate taxes, and the proceeds can replace monies that are made available to (or paid to) your surviving spouse.

There are numerous ways to keep everyone feeling happy and secure in a second marriage situation. The important thing is to address the issues before they “mature.”

If there is a trust or estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com with your suggestion and I will do my best to cover it in a future column.



Patricia C. Marcin is a partner at the law firm of Farrell Fritz, P.C. concentrating in trusts, estates and tax law. Patricia has lived in Lloyd Harbor since 2005 with her husband John. They have two sons, Sam and Matt. Their faithful dog, Blizzard, still lives at home.



“I’m so glad we updated our wills. Farrell Fritz helped us understand all the recent changes and the best part is, we minimized our estate taxes. I feel so much more secure about our family’s future.”

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