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April, 2011

THE BRADY BUNCH EFFECT – PLANNING FOR BLENDED FAMILIES

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As a society, we have come to expect that one out of two marriages will end in divorce; and 60% or more of second marriages will fail. According to the U.S. Census Bureau, 66% or more of the marriages and non-marital cohabitation relationships that end in dissolution, involve children in the relationship. It is predicted that 50% of the children in our country will experience a divorce before they are 18. Approximately half of all Americans are currently involved in some form of step-relationship. It is now estimated that more Americans are living in step families than in nuclear families. Regardless of the method of analysis, it is apparent that blended families are now the new “norm.”

Despite this new “norm,” our cultural forms, rituals and assumptions still relate chiefly to the intact, first marriage family. This often has a negative impact on the assumptions people make when trying to incorporate first marriage estate planning strategies into blended family situations, chiefly, we have to be concerned about the impacts on ‘his, hers and ours’ from a control and distribution perspective.

Prenuptial/Postnuptial Agreements

The first step in any good blended family estate plan is to protect and carve out the rules of engagement regarding the spousal rights during the 3 ‘D’s’ (disability, death and divorce). A great deal of this can and should be done in a Prenuptial or Postnuptial Agreement between the parties. Often the most important impact of these types of agreements is to limit and/or waive the spousal rights under the augmented estate spousal share under Virginia law. This means that neither spouse can attempt to change the previously determined distribution pattern after one spouse has passed and can no longer defend his/her assets position and/or family. Under Virginia law, this ‘spousal right,’ if not waived, can provide up to half of the deceased spouse’s estate to the surviving spouse. Needless to say, this can have a damaging effect on any previous plans made by the couple, such as the provision for each other’s children.

'I love you' Wills – Simple Wills

Many blended family couples get caught in the trap of establishing “I love you Wills,” providing for each other as primary beneficiary in the respective Wills and then the children equally thereafter. At first, this seems to be extremely equitable. Unfortunately, these instruments are subject to what we refer to as the survivor’s lottery. Whichever spouse is fortunate enough to survive the other now becomes the SOLE owner of the assets and they retain the legal ability to change their individual will to eliminate the deceased spouse’s children as beneficiaries. I wish I could say that this is the exception; but instead, I believe it is the norm. As such, simple Wills are usually insufficient estate planning instruments in blended family situations if the intent is to protect both of the spouses’ children as beneficiaries, regardless of the order of death within the marriage.

Revocable Living Trusts with QTIP Provisions

Revocable Living Trusts (“RLTs”) provide a stable estate planning platform for blended families. First, assets owned by or payable to RLTs are not subject to the probate system at time of disability or death. As such, the parties involved can privately decide in advance who will control, use and benefit from assets upon a disability or death of one or both spouses.

In addition, you can include Qualified Terminal Interest Property (“QTIP”) provisions in an RLT to allow a surviving spouse to have access and control of assets during their remaining lifetime without the power to redirect those assets away from the first spouse to die’s children/beneficiaries. As such, this provides all of the probate avoidance features that people often (and in error) attempt to use by way of Joint Ownership with Right of Survivorship (“JWROS”), without the danger of unintentional (or intentional) disinheritance by the actions taken by the surviving spouse.

ILITs and the use of Life Insurance

Life insurance is a powerful equalizer in blended family estate planning situations. In many cases, life insurance can be used to provide for an immediate liquid inheritance to the children of the first spouse to die (especially in cases where the surviving spouse is not much older than the children), while leaving the other assets in a QTIP RLT for the surviving spouse. Or in the alternative, if the family business is the major estate asset, and the children of the first spouse to die have been instrumental in the operation of the business; we may use life insurance to provide liquid resources to the surviving spouse (so that she does not have to rely on the operation of the business for income) and the business can be moved to the children as an immediate inheritance. In many cases, we will leverage an Irrevocable Life Insurance Trust (“ILIT”) with the purchase of the life insurance to capture the additional benefit of keeping the life insurance out of the Gross Estate of the first spouse to die, and therefore away from reaches of the estate tax.

Conclusion

Navigating the perilous journey of blended family estate planning should only be attempted with the experienced guidance of the appropriate financial, legal and tax advisors. Well intended, but poorly conceived actions can cause years of misery and fallout for those left behind to pick up the pieces of inappropriate planning, or in the alternative, the lack of planning altogether. The Attorneys of Johnson, Gasink & Baxter, LLP can assist you in building the correct core legal documents to plan and transfer your estate within your blended family and we can coordinate our efforts with your financial and tax advisors to ensure a smooth transition of not only assets and control, but more importantly the unity and goodwill within your blended family.



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About the Author:

Jeremy Johnson is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Jeremy takes great pride in making sure that his work for clients is always reliable, correct, and on time.

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