

# Blended Family Estate Planning

Many have argued that television is the looking glass of current society. Using that logic, we have transitioned from *Leave it to Beaver* to the *Modern Family*. In other words, we've left the traditional nuclear family model and have transitioned into the blended family model with step-children, step-parents, half-siblings, etc. The U.S. Census reports that blended families are the majority of our population.



With a blended family comes unique estate planning considerations. Perhaps you and your spouse have children from a previous marriage, or maybe just one of you has children. Maybe you have a child together, but children from a previous marriage as well. How are things supposed to play out when you've got so many different scenarios?

The first step is to figure out what you want to happen from a planning standpoint. Only you can decide how your legacy will pass, and failing to plan means your goals likely will not be met. If you do not have an estate plan in place when you pass away, your state has one for you. If you die intestate (e.g. without a will), many states will leave assets to your surviving spouse and your children, most commonly in a 50/50 split among them. However, in some states, if that spouse is not the

biological parent of the children, different splits, usually more to the children can occur.

On the flip side, let's say everything passes to your surviving spouse. The surviving spouse has no obligation to leave assets to "your" children, which means the step-parent and their children/family may inherit everything. These outcomes typically do not meet most people's legacy goals. Therefore, it's important that you create an appropriate estate plan for your blended family.

## Establishing a Plan

Like all estate planning situations, those with blended families must establish a plan for what they would like to happen should they become incapacitated and upon their death. The first question in that plan is whether you want to provide for your spouse or not. Some blended

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families bring spouses that are financially independent, while others may have a dependent spouse. Figuring out whether to provide for the surviving spouse is a key step to the plan.

Another issue may be when you would like your children to inherit from you. Is this at the same time your surviving spouse inherits, or do your children have to wait until their step-parent has passed away before receiving their inheritance? What about step-children, are they in the plan?

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*If you fail to plan, you are planning to fail!*

~ Benjamin Franklin

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Coupled with determining your planning goals, is the fact that you will likely have to coordinate your goals with your spouse. While it's possible to have a prenuptial or postnuptial agreement covering these issues, such agreements are uncommon. Therefore, having a candid discussion with your spouse regarding your plan helps alleviate any surprises and hopefully any animosity.

### Executing the Plan

Once you've established your goals, the next step is to execute the plan to achieve those goals. There are as many legacy goals as there are blended families, but some common goals and the techniques to meet those goals are:

**Trust Planning** The most common goal in blended family planning is for the assets of the first spouse to pass away remain available for the surviving spouse's needs until their death. Upon that second death the common desire is that the first spouse's assets pass to their children. Simply leaving assets to the surviving spouse does not guarantee this outcome. Utilizing trust planning, however, can guarantee such an outcome.

Leaving assets in a trust for the surviving spouse's benefit with provisions allowing payments of income and potentially allowing payments of principal for certain needs (commonly health, education, maintenance and support) allows for assets to benefit the surviving spouse for the rest of their life. However, because there are limitations on the use of trust funds, the surviving spouse cannot simply deplete or give away the assets.

Moreover, the deceased spouse's wishes for where assets should pass upon the surviving spouse's death can be established in the trust. This keeps the surviving spouse from dispersing assets elsewhere and guarantees your children's eventual inheritance.

Also possible in this type of trust planning is to allow the deceased spouse's beneficiaries to immediately benefit from the trust. Perhaps the trust pays all income to the surviving spouse but allows the deceased spouse's children access to principal for certain needs like to purchase a home or start a business. The levels of access to the trust funds can be as limited or as loose as the deceased spouse wishes. Of course, the deceased spouse will need to balance goals of providing for their spouse

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compared to the amount of access they provide to other beneficiaries. Because of these flexible options trusts typically can achieve many of the planning goals for blended families.

Should estate taxes be an issue for the blended family, your typical credit shelter trust can contain the same planning options as discussed above. However, what if you also need a marital trust to avoid estate taxes at the first death? The qualified terminable interest property (“QTIP”) trust can be employed to meet the tax planning need. A QTIP trust requires, at a minimum, that all income must be paid to the surviving spouse at least annually. If that minimum requirement is met, the QTIP trust qualifies as a marital bequest for estate tax purposes, and therefore qualifies for the unlimited marital deduction.

Of course the QTIP trust may permit the surviving spouse access to principal, but such access is not required. As long as the annual income distribution requirements are met, the QTIP will qualify for the marital deduction. A QTIP, however, cannot benefit anyone except the surviving spouse during the surviving spouse’s lifetime. Upon the surviving spouse’s death, the QTIP can then stipulate its assets are to be distributed per the first spouse’s wishes.

**Insurance Planning** Another common planning technique used by blended families is to utilize life insurance to meet legacy goals. Life insurance provides an immediate income tax-free death benefit that can pass either to the surviving spouse or the deceased spouse’s beneficiaries and allow the remainder of the deceased’s estate to achieve legacy goals. For example, the life insurance can “replace”

the wealth left to a surviving spouse, or it can allow children to enjoy an immediate financial benefit while the surviving spouse utilizes the remaining estate assets. Life insurance planning can also incorporate trust planning to leverage the benefits of trust planning discussed above.

**Plan for Incapacity** While most people associate estate planning with planning for one’s demise, it also involves planning for incapacity situations. In a blended family one may or may not want their spouse to be their financial or health care power of attorney if they are no longer capable of making such decisions for themselves. You need to plan who you want making those decisions for you and then document the plan with up-to-date power of attorney documents.

It is important to remember that the financial power of attorney and the health care power of attorney do not have to be the same people. If you trust your spouse more to make the right decisions on one side of the ledger but your children are better at the other, that is fine. The most important thing is that you consider who you want making those decisions and you execute power of attorney documents that reflect your desires.

**Personal Property Lists** How personal property shall pass is often a heated discussion after a death in a blended family, even if the monetary value of the assets is negligible. Who gets the grandfather clock or the painting over the sofa can become a litigious matter. Many states allow for a personal property list to be utilized to transfer certain tangible personal property in lieu of addressing such specifics in a will. On that list you can line item your personal property and who you want to inherit that property.

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Typically, as long as the personal property list is dated and signed before the decedent's death it is given full effect. Therefore, you can start and continually update a personal property list so that your beneficiaries will know who you wanted to inherit particular personal property.

**Aligning Assets with the Plan** As you implement whatever planning techniques suit your needs, you must also make sure your asset titling and beneficiary designations align with your plan. Beneficiary designations, in assets like retirement accounts, insurance contracts, and annuity holdings, trump any will or trust plans because the assets pass per the beneficiary designations when you die. Therefore, if you're utilizing a will or trust plan, you must specifically designate the appropriate agreements for the assets to pass per those terms.

**Consider Sharing the Plan** While it's not necessary to share dollar amounts or specific terms of your planning, consider sharing the basics of your legacy structures with your beneficiaries so no one is caught off-guard when you pass away. Explaining to your children that their step-parent will have assets available to them in trust so that when their step-parent passes away the assets will be preserved for the children's inheritance can help smooth over the transition.

**No Contest Clauses** Though not always enforceable in every jurisdiction, including a no-contest clause, also known as an in terrorem clause, may be beneficial for your planning. The typical clause states that if any beneficiary challenges your estate plan then that beneficiary is deemed to have predeceased you. What that means is that their inheritance will lapse and they will get nothing. This can slow or halt disgruntled blended family members from crying a foul of the plan since doing so jeopardizes their potential inheritance.

*These are just a few of the many planning techniques available for blended families to consider. If the family understands your wishes, and you take all of the necessary steps to plan and implement your intentions, your blended family legacy goals can be achieved. ■*

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