PLANNING FOR SECOND AND SUBSEQUENT MARRIAGES

LEGACY®
ASSURANCE PLAN

Walking down the aisle a second time can bring great joy into your life, especially after a loss or divorce.

For many Americans, a second marriage is commonplace. Statistics show that half of marriages in the United States end in divorce. The rates are even higher for those who remarry with a 60% chance that a subsequent marriage will end in divorce. Another telling statistic is that in 43% of marriages, at least one of the spouses has been married previously.

When your second marriage creates a blended family that includes children from previous relationships, it can be even more rewarding, but it can also create certain challenges. Although it might not be the first issue that comes to mind when bringing two families together, estate planning becomes especially important in this situation.

In this booklet, we will highlight some of the most common concerns for estate planning after a second marriage and in a "blended" family. When getting married again, most people are not familiar with the unique challenges of estate planning within a blended family. As a result, it is important to note which of the following scenarios could apply to your situation and consider updating your plans or creating new estate plans to ensure your wishes for your new spouse and each of your children are carried out.

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The Avoidance Problem

Even in traditional families, estate planning can be an uncomfortable or difficult topic to broach. This tends to be even more challenging with a second or subsequent marriage, especially if you both have children from previous marriages or relationships. However, the consequences of avoiding this conversation are even more dire in second marriages. This is primarily because laws affecting estate distribution have been written to fit the needs of a traditional first marriage.

If You Do Not Have a Will

For those who have avoided estate planning in general and do not have a will, the state intestacy laws will determine how your assets will be distributed upon death.

Many people assume that when they die without an estate plan, their family members will decide how the estate is distributed. This belief is false. If you do not take the time to create an estate plan, one will be created for you under your state's intestacy laws.

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State intestacy laws are strictly applied to everyone who dies without an estate plan; no exceptions are made. It is essentially a default, one-size-fits-all plan that is based on the traditional American family. The framework does not take into account the unique circumstances of your life and family. For many individuals, the default plan is not a good fit and has unintended ramifications. If you have a blended family, there is a good chance that your property will not be distributed as you intend if you die without an estate plan.

The main issue with this system is that many of these laws attempt to provide the asset distribution that most people would prefer in the context of a traditional first marriage.

As a result, most states provide that if you die without a will and are married, the majority of your estate will go to your spouse. In some states, all of your estate passes to him or her. Under most states' intestacy laws, your property is distributed in the following order: surviving spouse; biological or adopted children; parents; and siblings. Intestacy laws do not recognize stepchildren.

Consider the example of Mary and Todd, who are married with two sons. If Todd passes away without a will, then Mary will inherit their entire estate. This scenario is not necessarily problematic, as Mary presumably will use the estate to care for their sons then leave the remainder of their estate to them upon her death, but what if Mary and Todd were on their second or subsequent marriage?

If instead Mary and Todd have been married before, and one son is from Mary's prior marriage and one son is from Todd's, then the laws may not provide the best distribution for them. In this scenario, if Todd passes away, then Mary still inherits their entire estate. But what about Todd's son? Without any guidance from a will or other estate planning tool, Todd's son is left with nothing. Mary could remarry or be-

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come distant from him, and she has no obligation to pass on anything to him, even if much of the wealth she inherited came from Todd.

To prevent this scenario and many other "intestate disasters" from taking place, we highly recommend that you begin your estate planning journey as soon as possible.

If You Have a Will or Trust

If you previously completed your will, trust and other estate planning documents like beneficiary designations, life insurance and powers of attorney, then embarking on your second or subsequent marriage is the perfect time to review and update them all to reflect this major life change.

If you do not make these updates, then your current documents will remain in force. Although the law may automatically treat gifts to your ex-spouse as void after divorce, this is not the case for all of the estate planning documents listed above. In addition, where the law presumes you meant to disinherit your ex, it also treats the distribution of those assets the same way that it would if you had no will at all. So, those same intestacy laws mentioned above would apply, and your child or children could receive nothing from your estate.

It is also important to note that simply removing your ex-spouse's name and inserting your current partner into your will or trust is not likely to be your best option. First marriage wills are often "mirror" wills, where each spouse's will leaves everything to his or her partner. This can work well for a traditional marriage, as children of these marriages often ultimately receive the remainder of the estate after both spouses pass away.

However, in the case of a blended family, a will in which the spouse inherits everything could be problematic, as we will explain.

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How Traditional Planning Can Fail Blended Families

It is very common for married couples to have mirror or "reciprocal" wills in which each spouse names the other as his or her primary beneficiary. As mentioned, this can work well for a marriage where all of the children are shared by the couple, but it can be disastrous in a blended family.

With a second marriage and blended family, leaving all of your assets to your spouse can create a substantial risk that your biological children become disinherited at some point the future. This is because with a reciprocal will, you have no ability to influence or guarantee your partner's estate planning decisions once he or she receives your entire estate.

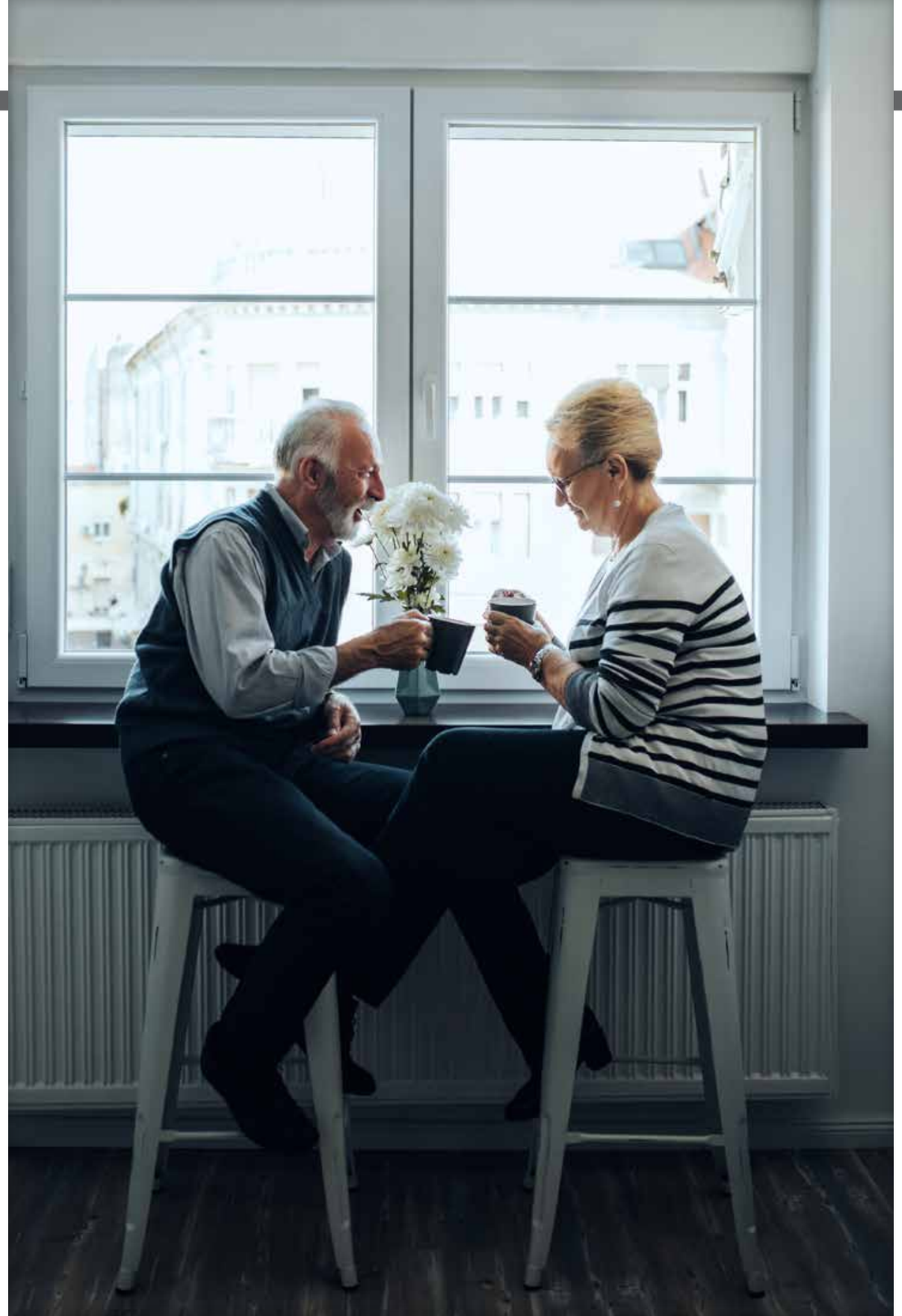
Take Alice and Albert, for example. Alice was married previously and has two children from that marriage. Albert was also married before, and he had one son with his ex-wife. After Alice and Albert marry, they execute reciprocal wills where Alice is Albert's primary beneficiary and vice versa. Albert then passes away, and all of his assets transfer to Alice. After Albert dies, Alice's relationship with his adult son becomes strained. Albert's son is especially upset with Alice after she remarries again. As a result, Alice updates her will to remove Albert's son completely, leaving him with nothing. Was this the result Albert intended when he and Alice first made their wills? Certainly not. Albert was likely unaware of this potential outcome at the time, and his son — his only child – could not have expected this to be the ultimate ending for his father's assets.

What's worse is to imagine if one of Albert's assets had been a family business that he wanted transfer to his son. Albert also wanted his son to manage the business and keep it in the family. By relying on a reciprocal will, Albert enabled his remarried widow, Alice, to disregard his intentions. Instead, Alice and her new husband decided to sell the business, keep the proceeds and deny Albert's son a financial share. More importantly, the business is no longer in the family, which was Albert's lifelong desire, and his son lost his job managing the company.

In addition, typical joint trusts can be problematic in the context of a second or subsequent marriage as well. This is because, similar to reflective wills, joint trusts often permit the surviving spouse to make changes like removing children as beneficiaries.

In the example with Alice and Albert, this would mean that instead of executing reflective wills, they decide to create a joint trust where they are both named as grantors (the persons funding the trust) and trustees (the persons with administrative control of the trust). When Albert passes away, Alice then decides to use her authority as grantor to change the trust beneficiaries to remove Albert's son. In this example, the same result occurs as with the reflective will. Albert does not foresee or intend for his son to be disinherited, but his flawed planning allowed for this to happen.

Also, even if they addressed this by including a clause restricting the right to change beneficiaries after one spouse passes away, Alice still could take actions to prevent Albert's son from receiving his father's assets. By removing assets from the trust and retitling them, which she could decide to do in her role as trustee, Alice could still disinherit her late husband's child.



Age Gap Issues

It is very common to have a wide age gap between spouses in a second or subsequent marriage, and the potential issues of traditional estate planning only tend to become more likely or more severe in those circumstances.

The main reason for this is simply time. Where this is a wider age gap between spouses, there is a greater likelihood that the surviving spouse will outlive his or her partner, and also a higher probability that the time between their deaths will be much longer. As a result, there are additional considerations to take into account with a wide age gap to avoid having your estate plans go awry.

First, depending on the age of your new spouse and the age of your children, you may want to consider the timing of each person's inheritance. With a will or trust that provides all or most of the estate to your spouse, your children may have to wait decades to receive their inheritance. This is especially problematic in situations where the spouse and adult children are closer in age.

In addition, the likelihood that a much younger spouse will change the beneficiaries after her husband's passing becomes even greater over a longer period of time. She may remarry, have additional children, or simply lose contact with your children. As a result of those inevitable life changes, she could decide to remove your children or substantially reduce their inheritance.

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Distribution Dilemmas

Timing and potential disinheritance are not the only concerns to consider when embarking on estate planning in a second marriage. The specifics of the distribution of your and your spouse's assets also must be addressed in order to ensure both of your wishes are realized.

How to Distribute Assets

Although it may not be the first issue that comes to mind when considering estate planning with your second or subsequent spouse, the way you transfer your assets, your spouse's assets and your joint assets to your children can be an area of conflict if not addressed up front.

While you might assume that the best way to transfer assets to your spouse's children is through a trust or other tool that prevents them from squandering their inheritance, your spouse may have very different feelings about this topic. This can be especially problematic if you believe your children should receive their inheritance outright.

Which Assets to Distribute

Even in situations where you and your spouse agree on distribution methods, deciding which assets specifically will be distributed to each beneficiary can become even more complicated if not addressed.

With second and subsequent marriages, spouses often enter the marriage with property they purchased or inherited before meeting their new spouse. Sometimes this can be as unromantic as rug or piece of furniture, but often there are items, or pieces of property, that people would like to stay in their family. This can include family heirlooms, sentimental items or simply high-value property or real estate – like a family farm.

When planning your estate after a second or subsequent marriage, it will be important to decide if you have any such assets that you would like to be distributed to your children. Similarly, your spouse should consider this question as well to ensure that his or her wishes for certain items are followed.

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In addition, you may have strong feelings about properties or items that you purchased as a couple, like a second home. In either scenario, it will be important to discuss and specify to whom each item or property will go and then communicate that decision to your family to avoid stressful and expensive litigation.

For example, Sarah and Fred each have one child from a previous marriage. When Sarah and Fred married, Sarah had a home in the mountains that she promised to her son. Fred came into the marriage with a vintage sports car that he knew his daughter always coveted. After they married, Sarah and Fred purchased a home together as their primary residence. During their recent discussions about estate planning, their attorney suggested that they each create a list of items that they would like to leave to their child. Through this thoughtful planning, they were able to ensure that Sarah's son would receive the mountain home, Fred's daughter would receive the sports car, and the proceeds from their home and other assets would be divided in a way that made each child's share of their estate equal.

Expectations of Distribution

Although it is common for children to receive their inheritance after both parents pass, this becomes more complicated in a second or subsequent marriage. Children expect this to be the case when their parents are

married, but once they remarry after a divorce or loss, adult children's expectations tend to change regarding the timing of their inheritance.

After their parent remarries, children often assume that their parent's estate planning allows them to receive their inheritance irrespective of the new spouse's needs or plans. Regardless of whether this tendency is right or wrong, it often leads to unintentional disputes and ill will between children and their parent's spouse after his or her death.

To prevent this from occurring, the best action you can take is to clearly communicate your decisions and reasons to your children once you have your plan in place. Whether you prefer to distribute part or all of their inheritance first or decide to leave the ultimate decision in your spouse's hands after your passing, you can mitigate any potential hurt feelings by explaining your thought process to your children. In doing so, you can help prevent unnecessary lawsuits contesting your estate and also give your spouse and your children the best chance of having a good relationship into the future.

Commitments to Prior Marriage

Another challenge unique to estate planning in a second or subsequent marriage is the need to address any commitments made to your or your spouse's prior marriage. Divorce agreements or final orders often involve ongoing or long-term financial commitments to an ex-spouse or children. This can include a requirement to name your ex-spouse as the beneficiary of a retirement account, maintain life insurance for your ex-spouse's benefit or provide spousal support for an extended period of time. Or, it could involve requirements to maintain health insurance for your ex-spouse and/or children, or pay for other expenses, like your children's higher education.

When planning or updating your estate plans following a second marriage, these commitments and any other lingering legal or financial entanglements with your ex-spouse must be addressed to ensure your new spouse understands the obligations your estate will continue to have regardless of your plans together.

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Children Who Are Not Considered 'Children'

Understanding who is considered a "child" with an inheritance right is also a much simpler exercise in a traditional first marriage. In a second or subsequent marriage, the term could apply to more potential heirs. However, just as with other aspects of intestacy laws, the legal definition of "child" for anyone without a will is written to work best in the context of a first marriage.

Under most intestacy laws, only biological or legally adopted children are considered "children" who receive an inheritance from a parent who died without a will. This means that if a stepparent dies without a will, his or her stepchildren will not receive anything at all by law unless they were adopted.

Consider the example of Steve and Maria. Before marrying Steve, Maria had two children with her ex-husband. Steve did not have any children in his first marriage. When Steve and Maria wed, Maria's children were very young, and Steve's relationship with them was akin to a traditional father-child relationship. Years later, Maria dies

without a will, and Steve receives her entire estate. Steve and Maria's adult children remain close until he passes away. Steve also did not execute a will before he passed, and so intestacy laws dictate how his estate will be distributed. Maria's children are not considered Steve's heirs under the law, because he never legally adopted them. As a result, Steve's estate, which also contains everything he received from Maria, passes to a distant relative, and Maria's children receive nothing.

This situation can also be problematic where Steve has children of his own. In that case, when Steve passed away, his estate would be distributed equally to his biological children. This would mean that anything Maria left to Steve would also pass to Steve's children only, while Maria's children receive nothing from either parent.

This scenario is clearly not intended by Steve, but without adequate planning, it is the legal reality that his loved ones will face because the laws are not written with his and Maria's blended family in mind.

In order to avoid this and other issues with intestacy laws, it is highly recommended that you work with an attorney to create a will and take other applicable estate planning measures. If Steve had taken this simple step, it would not have mattered whether or not he legally adopted Maria's children. By creating a will or trust, you have the power to decide whom to name as a beneficiary, how much he or she will receive, and how each beneficiary will receive those assets. Although this power is important in any context, it is especially critical in a second or subsequent marriage where these and other complications are even more commonplace.

Rules for Adopted Children

In the scenario with Maria and Steve, you might be wondering what would have happened if Steve had legally adopted Maria's children. For purposes of Steve's estate, they would have been treated the same as if they were Steve's biological children. This means they likely would have received equal shares of his estate after his passing.

Legal adoption terminates the rights between a biological parent (sometimes referred to as a "natural parent") and his or her child.

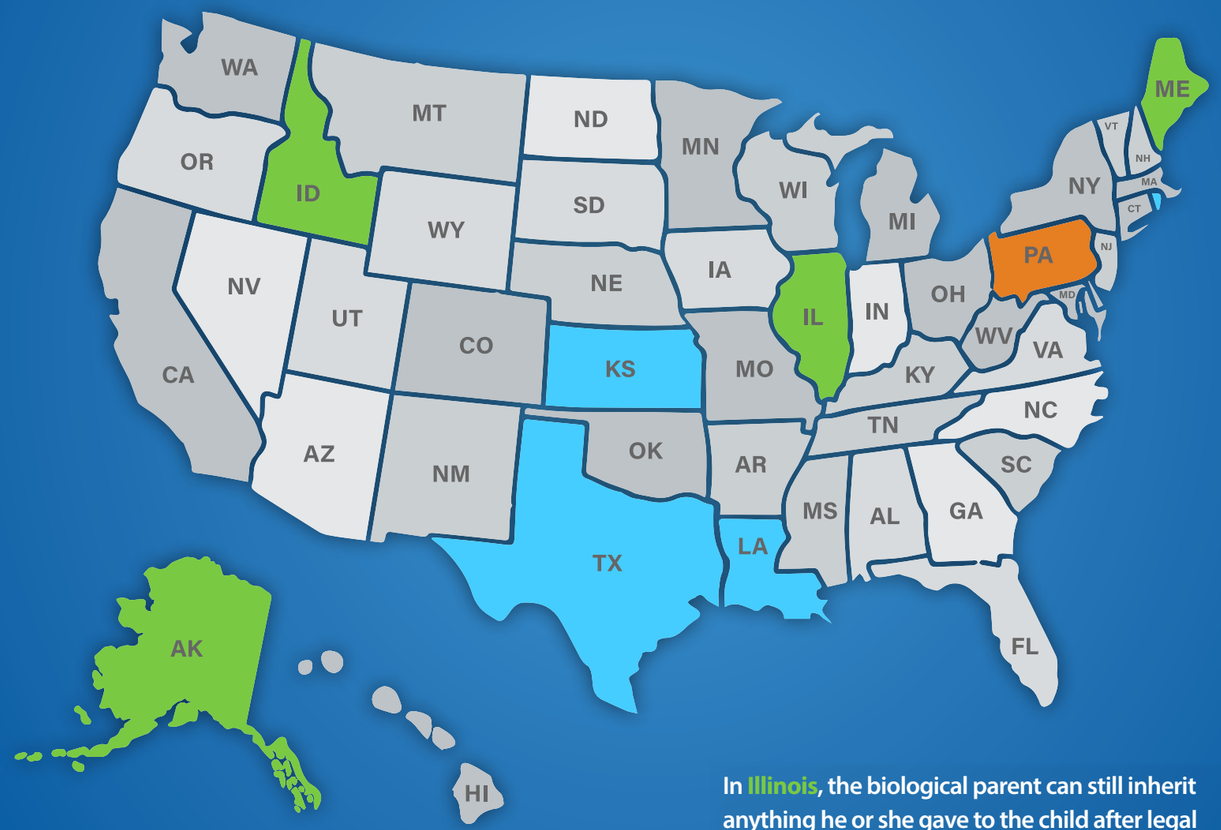
But what about Maria's first husband, her children's actual biological father? If Steve adopts her children, does it affect their inheritance from him?

This question largely depends on state law, and so we highly recommend consulting an attorney with expertise in state adoption and/or estate planning laws if this applies to you. In general, however, a legal adoption terminates the rights between a biological parent (sometimes referred to as a "natural parent") and his or her child. This means that when a stepfather adopts his stepdaughter, she loses her legal right to an inheritance from her biological father and vice versa.

In the case of Steve and Maria, this means that if Steve adopts Maria's children, they will likely lose the right to an inheritance from their biological father. Their father may still choose to include them in his will, but if he dies without one, they will have no legal right to any of his assets.

However, there are several nuances in state law that can affect this scenario. The following examples show how the treatment of this question can vary widely depending on your state:

STATE ADOPTION LAWS



In a few states, including **Alaska, Idaho, Illinois** and **Maine**, the child can retain his or her inheritance rights if the adoption decree includes that provision.

In states like **Kansas, Louisiana, Rhode Island** and **Texas**, a legal adoption does not affect the child's right to inherit from his or her biological parent, but the biological parent's right to inherit from the child is terminated.

In **Illinois**, the biological parent can still inherit anything he or she gave to the child after legal adoption by another person.

In **Pennsylvania**, an adopted child can still legally inherit assets from relatives of their biological parent if they have a close relationship with them.

In a number of states, the law specifically provides that if a stepparent adopts their partner's child after their partner dies, then the child's right of inheritance stemming from their deceased parent or relatives of that parent are not affected by the adoption.

These examples reflect the state adoption laws as of 2016 and are for illustrative purposes only. To determine the laws affecting your estate plans and specifically how an adopted child would be treated by law in your state, we recommend working with an attorney knowledgeable in these issues.

Consequently, it is critically important to consult an attorney with expertise in this area of law to determine the effect a legal adoption may have on your blended family's estate plan. Each family's situation is different, from the relationship between the stepparent and child, the involvement of the biological parent, and the overall estate planning goals, so expert legal advice will be essential to ensuring your wishes are carried out.

A final note on laws affecting adopted children: Although these laws generally apply in cases of intestacy, or where a person dies without a will, they can also affect an adoptive parent's estate even if he or she executed a will. This is because when an adoptive parent fails to include his or adopted child in their will, especially when the will is executed before the adoption takes place, the law often presumes this was an error. As a result, unless there is evidence that the parent intentionally disinherited their adopted child, the child will receive the same share that they would be legally entitled to if the adoptive parent died without a will.

For example, if Steve executed a will in 2010, adopted Maria's children in 2015, and then passed away in 2020 without having updated his will to include Maria's children, then the law likely will assume that he intended to include them. Consequently, they will have the right to inherit whatever portion of his estate that would be due to any of Steve's children under the intestacy laws of the state.

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Charitable Legacy Concerns

One final aspect of estate planning in a blended family that tends to be overlooked is the impact a second or subsequent marriage can have on charitable or legacy gifts. Especially in situations where spouses have differing charitable interests, intended philanthropic gifts may not come to fruition without adequate planning.

With substantial charitable commitments made during your lifetime, a gift agreement typically controls how your pledge will be treated if you were to pass away before it is fulfilled. Although most charitable organizations choose to "write off" the remainder of a pledge when a donor dies, this is not always guaranteed, especially if the gift was recognized by naming a building or relied upon for construction, renovation, or other important funding when the project is already underway.

As a result, the best approach when handling lifetime philanthropic pledges with your new spouse is to ensure that he or she is aware of such commitments and the impact they could have on your estate. Based on the gift agreement, this could mean that a portion of your estate must be set aside to fulfill that obligation. If your spouse is aware of this commitment and its potential effect on his or her inheritance, then chances are much better that lawsuits and other costly litigation can be avoided.

In the context of legacy gifts, or charitable gifts that you intend to make through your estate plans, the greatest risk is that your new spouse revokes or changes your gift at some point in the future. This commonly happens when spouses execute reflective wills, which we explained above are wills that name the other spouse as the primary beneficiary. Even if you and your new spouse discuss and agree on charitable gifts to make from the assets remaining after you both pass, the surviving spouse can change or fail to include those gifts in his or her last will.

This is also true with charitable trusts and other trusts where your second or subsequent spouse is also a trustee. He or she can often amend the trust to change which charities will benefit from a charitable trust or remove a charitable beneficiary of a traditional joint trust.

Similarly, many people decide to make their legacy gift through a beneficiary designation of a retirement account or other financial account by naming their new spouse as the primary beneficiary and a charity the contingent or secondary beneficiary. Although they view this as a charitable gift, many people who do so are not aware that in this arrangement their spouse will receive all of the funds in that asset without any obligation to support the charity in any way.

To avoid these outcomes, the best way to ensure your charitable legacy gifts are honored is by taking measures to include them in your personal estate plans. Although our loved ones will often make earnest promises to support the causes we care about most after we are gone, they often either forget or choose not to do so when the time comes. This tends to be even more common in second and subsequent marriages, especially when there is a large age gap between spouses.

You're Taking an Important Step

Planning your estate after you marry again can be challenging for the reasons we've discussed, but it does not need to be. With help from an experienced attorney, you can avoid these and other common pitfalls that tend to cause issues in a blended family. By picking up this booklet, you are already improving the odds that you and your family will not fall victim to these problems, which are by and large entirely preventable. And by engaging in thoughtful estate planning for your new spouse and blended family, you can have the peace of mind that will allow you to focus on the best parts of your new chapter together.

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