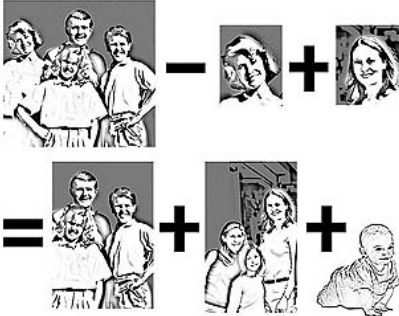


Divorce, remarriage can make estate planning especially challenging

Friday, May 29, 2009

By Tim Grant, Pittsburgh Post-Gazette



Anita Dufalla/Post-Gazette

After 15 years in their second marriage, the husband was preparing to retire with \$1 million in his IRA, and the wife, who had been a stay-at-home mom, was shocked to learn she had no ownership rights to the account.

"She was devastated," said Lyn Dippel, a lawyer and financial planner at Financial Advantage in Baltimore. "She had raised the kids all this time and had no money to leave her two kids from a former marriage.

"She was at the mercy of her husband going along with a plan to take care of his two kids from a former marriage and hers. She thought they would split the money, but she realized it was all under his control."

What ended up happening, Ms. Dippel said, was the couple created a trust for the wife to benefit from the money during her lifetime if the husband died first and then it would be equally divided among the children when she died.

When couples with children from previous marriages get remarried, estate planning can present some unique challenges.

The interests of a current spouse and children from the current marriage may conflict with a spouse's desire to provide for children from a previous marriage.

"No matter how much trust one spouse has in another, I would never recommend relying solely on a verbal agreement. It has to be reduced to writing," said Phyllis Silverman, a senior trust adviser and vice president at PNC Wealth Management, Downtown.

Mrs. Silverman even suggests married couples in blended families retain separate attorneys when it comes time to do an estate plan because there are competing interests.

"When someone dies, you are dealing with all the grief and pressures associated with that," she said. "And even the best blended families are going to have conflict that other families may not have as a result of that death."

With divorce rates as high as they are, more families today are becoming blended with children from different marriages and relationships. Estate planning, important for any family, may be even more so for spouses who do not want to disinherit their children from a previous marriage.

A surviving spouse is free to do whatever he or she wishes with inherited assets. That could include writing a new will that will exclude stepchildren and favor the surviving spouses' children from a previous marriage or a new spouse or someone else.

One safeguard solution could be a qualified terminable interest property trust or QTIP Trust, Mrs. Silverman said.

Such a trust is a tool meant to provide for the surviving spouse and still protect a portion of the assets for the children. The property is not taxed at the death of the first spouse, so the entire amount is available for the surviving spouse's support.

The trust generates income for the surviving spouse's benefit. When he or she dies, the assets are distributed to the children based on the wishes of the deceased spouse.

Ms. Dippel said that if the surviving spouse is considerably younger with a long life expectancy, the couple might be better off purchasing a life insurance policy that names the children as beneficiaries.

"Generally, where there is a second marriage involved, the primary wage earner is trying to balance the interests of children and grandchildren from a first marriage and provide for the lifetime of the surviving spouse," said Karen Bononi, an estate lawyer at Schnader Harrison Segal & Lewis, Downtown.

"They don't want to leave a second spouse impoverished. But they also want to make sure the assets ultimately end up with their own children and grandchildren."

The potential for suspicion and family strife is so great that many blended families try to avoid talking about the estate plan until they are pressed to do so, usually by a financial planner or attorney.

"It is the No. 1 most emotional topic I've helped people deal with," said Ms. Dippel.

She, too, firmly advises against relying on oral promises.

"Everybody says they won't [renege on their verbal agreement]. But 20 years down the road, who knows? It isn't that people aren't trustworthy. But over time people and things change, and you have no idea what will happen."

Tim Grant can be reached at 412-263-1591 or at tgrant@post-gazette.com.

First published on May 29, 2009 at 12:00 am