

From Me To We... And Back To Me? (Planning for Divorce and Remarriage)

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When dealing with divorce and remarriage, there are two simple issues we must address. First of all, if you are divorced and your children are minors, who will manage your children's inheritance should you die or become incapacitated? Would it be your ex-spouse? In most cases, if you die or become incapacitated the court would transfer custody of your assets and your children to your ex-spouse if he or she isn't the custodial parent already. With custody comes duties and responsibilities. Those duties and responsibilities are to manage the assets you leave to your minor children. In essence, what has happened is that your ex-spouse now manages the money and assets that you acquired through the divorce!

The mere thought of giving your ex-spouse control over how your assets are spent is not acceptable to most divorced individuals. You may have reason to believe that your ex-spouse may not manage the money properly or that your children will not enjoy the full benefit of the money you leave them.

Who will serve as Conservator?

If you die without an estate plan, you are in essence leaving the court with the decision on how to divide your money and distribute it among your children. In most situations, the probate court can only control the assets (with the assistance of your ex-spouse) until the child's 18th birthday. At which time, the child's remaining portion will be distributed outright. How many of you believe an 18 year old is mature enough to manage a lump sum of money? How many of you are comfortable with your ex-spouse managing your child's money until the child turns 18?

Controlling the Age of Distribution

For many parents, your ideal age of distribution may vary greatly from the State of Michigan deems acceptable (age 18). You may want the money to last through college or until the child's 30th birthday. Unless you plan ahead, your opportunity to control your money and keep it out of your ex-spouse's hands and the court's control, is completely lost!

Remarriage

The second issue that must be addressed is remarriage. In many second or third marriages, there are typically children of both first marriages. Many remarried couples don't think twice about owning all of their assets in joint ownership with each other. Typically, the process starts by putting both names on the house, then a joint bank account is opened, followed by joint investments.

Disinheriting your Children

Unfortunately, if you own all or many of your assets jointly with your spouse, you may disinherit your children. You ask how? Joint ownership or joint ownership with rights of survivorship (JTWROS) means that when one of the joint owners dies, all of the assets will pass to the surviving spouse. When the surviving spouse dies, all of the assets will pass to his or her children, not your children. Since the surviving spouse now controls all of the assets, the surviving spouse is under no legal obligation to return or leave any of the assets to the deceased spouse's children. Even if both spouses agree to divide the assets among all the children, the surviving spouse could have a new will drafted.

Estate Planning Strategy

Fortunately, many of these problems can be avoided with a well thought out and specifically designed estate plan that provides for your children and your new spouse. With a well designed estate plan, you can control who inherits from you (children and/or spouse), when and how your assets are distributed (for children's education or a spouse's care and support), and you can designate someone you trust to see that your wishes are carried out after your death.

The Revocable Living Trust

A revocable living trust is designed to avoid all of the pitfalls discussed earlier. For example, the trust allows you to designate a successor trustee (or successor money manager) to manage your assets for your minor children should you become incapacitated or die. With a trust, your ex-spouse or the court will not be in charge of controlling and managing your children's inheritance, your trustee will take over that responsibility. Your successor trustee will assume responsibility for the management and distribution of your assets. The trustee will be responsible for following the directions in your trust. For instance, you may want the trustee to distribute money for a minor child's health, education and support, but you may not want a lump sum to be distributed to a child until a certain age is reached or until a major event occurs . . . like graduating from college or marriage.

A revocable living trust also allows you to make arrangements for a second spouse, without placing everything in joint ownership. Instead of owning assets with your spouse, your assets would be owned by your trust. Your trust could provide for the surviving spouse's lifetime use of the home or for a stream of income from your trust investments for the spouse's care and support. Since the assets are owned by your trust and not by your spouse, at your spouse's death the assets will pass to your children and not to your spouse's children. Again, your successor trustee will follow the directions in your trust. The revocable living trust provides you the control you seek and the peace of mind that your loved ones are cared for after your death.

