



Blended Family Basics

Are you a member of a blended family, either directly or indirectly? If no, then you may be in the future. If yes, then you are in good company. Did you know one of three Americans is a blended family member? In fact, there will always be blended families as long as there are divorces and deaths among married couples. Regardless of the composition of your blended family, this fact of life presents unique social, psychological, economic and legal challenges.

In this article we consider some fundamental legal challenges, so you can address them now to protect everyone you love and everything you have later. Specifically, how will you disinherit your ex-spouse, provide for both your new spouse and your own children, and protect the inheritance from unintended consequences?

Disinherit Your Ex-Spouse

Problem 1: If you have minor children, then your ex-spouse will remain the legal guardian over their “person” and their “purse” until they reach the age of majority under state law. While only a legal finding of “unfitness” by court order will keep your ex-spouse from parenting your minor children, your estate plan can provide that someone of your own choosing will manage any inheritance for your children. Without careful planning, your ex-spouse could actually inherit from you through the estates of your children should they die while single and childless.

Problem 2: Unless you have “cleaned up” the beneficiary designations to your ERISA retirement plan (e.g., 401k), then your

ex-spouse will inherit the proceeds, if he or she is still the designated beneficiary. That was the ruling by the U.S. Supreme Court in *Egelhoff v. Egelhoff*, 532 US 141 (2001). Consequently, one of the first steps post-divorce should be to update the beneficiaries of your life insurance and retirement plans.

Provide for Your New Spouse

Likely you exchanged some solemn vows on your wedding day. For example, you probably promised to take care of your new spouse both physically and financially. Even if you did not exchange such traditional vows, the laws of your state exchanged them for you ... absent a premarital agreement defining your mutual rights and responsibilities.

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So, how do you honor your new responsibilities to your new spouse, if you predecease? Through very careful estate planning, to include careful attention to detail regarding asset titles and beneficiary designations. Many families, blended and original, have been torn apart when the estate planning legal documents were not coordinated with the asset titles and beneficiary designations.

For example, your estate plan may provide for your children, but your assets may be arranged to pass directly to your new spouse. Alternatively, your new spouse could be cut out of the inheritance to a degree you did not intend. Surely you do not want your inheritance to be consumed in a courtroom through legal fees as your new spouse and your own children fight it out.

Provide for Your Own Children

After a divorce or the death of a parent, children can become bitter, better or just drift. When a new stepparent enters the picture, let alone stepsiblings, things can get especially interesting. Therefore, it is only prudent to make flexible plans now that will accomplish your objectives regardless how your children turn out later.

Accordingly, arrange for the inheritance to be protected both *for and from* your own children as needed. Otherwise your lifetime of work and thrift can disappear through the potential squandering, divorces, lawsuits or bankruptcies of your children.

Protect the Inheritance

Did you know you can make the inheritance you leave to your new spouse and to your own children *heir tigh?* Outright distributions simply transfer the inheritance directly to a beneficiary and provide

absolutely no protection. Staggered distributions are the same as outright distributions in terms of no protection when two or more transfers are made directly to a beneficiary upon reaching certain ages.

In contrast, consider creating a long-term discretionary trust to last throughout the lifetime of a beneficiary, providing income and with principal as needed. All along the way, whether a beneficiary is your new spouse or your own children, the inheritance is fully protected for and from them.

The key to a successful discretionary trust is selecting an appropriate trustee with broad discretionary authority. In addition, the non-fiduciary position of “trust protector” can be created to appoint and even remove a trustee if needed to fulfill your objectives. Think of the trust protector as the “guardian angel” over the trust.

Avoiding Unintended Consequences

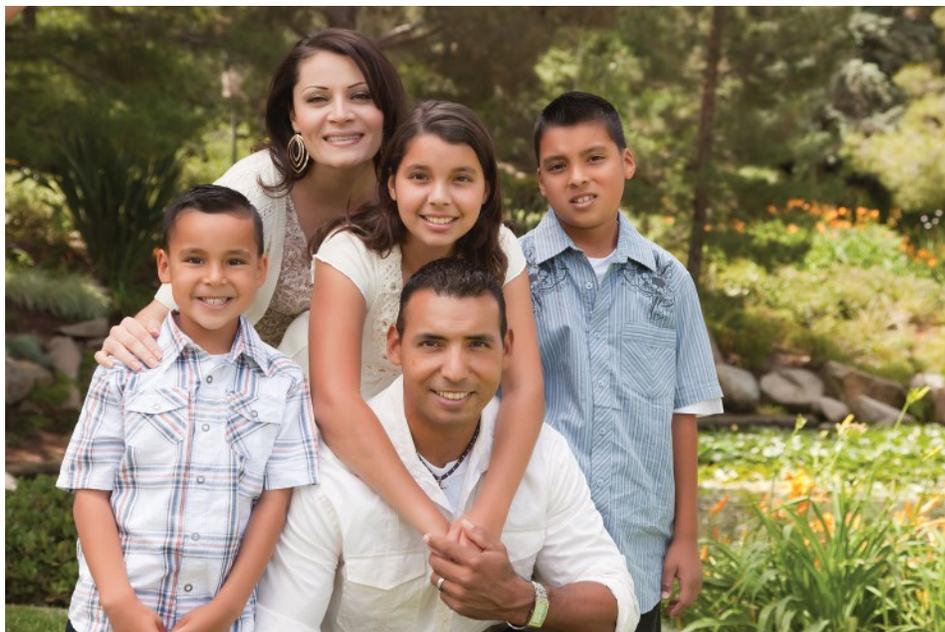
There are a lot of moving parts when it comes to proper estate planning. There is no one-size-fits-all strategy to meet the

legal challenges identified in this article, but here is a simple formula to consider: Qualified Terminable Interest Property (QTIP) Trust + Life Insurance = Blended Family Harmony.

Upon your death, this formula can provide an inheritance for the life of your new spouse, insurance proceeds for your own children, and ensure that the remainder of the inheritance for your new spouse will then pass to your own children when your new spouse dies.

Review Your Estate Plan

Failing to review your estate plan can result in a train wreck of court processes for your family and loved ones. Be sure to engage appropriate legal counsel before you pursue any financial or legal strategy to overcome blended family challenges.



Pre-Marital Planning

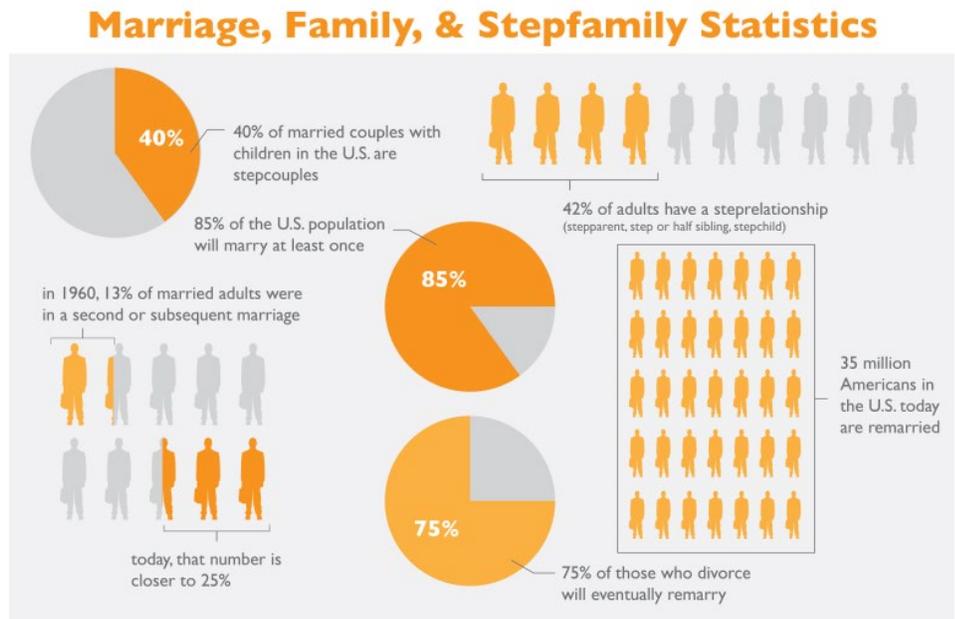
When contemplating marriage, remember that love may be blind, but it is wise to proceed with both eyes wide open. This wisdom is never truer than when that marriage will form a blended family. After all, both parties are blending their respective assets and, oftentimes, their respective children.

It is estimated that one in three remarriages end in divorce, especially when children are involved. So, how does a couple “unblend” their assets when things do not work out as planned? Further, if the remarriage stays intact when one spouse dies, what happens with the assets of the deceased spouse?

In light of these realities, the parties should consider negotiating and signing a premarital agreement before saying “I do” that addresses these issues. Once the premarital agreement is signed it takes affect when the marriage is legal. The agreement should clarify asset ownership during the marriage, asset disposition upon divorce, spousal support, and asset division upon death.

Once those details are covered, be mindful to ensure that the agreement will withstand future legal challenges. To help make the agreement bullet-proof ensure that both parties:

- Provide full written disclosure of their assets and liabilities;
- Provide adequate time for negotiation and reflection well in advance of the wedding day;
- Ensure that the agreement is voluntary and not unconscionable (i.e., unfair);
- Ensure that each party understands the consequences of the agreement; and



Source: <http://www.smartstepfamilies.com/view/statistics>

- Ensure that each party has independent legal representation.

While admittedly not very “romantic,” a premarital agreement can start the remarriage off on the right footing. Not only will both future spouses know what their future rights and responsibilities will be, but their children will know the rules of the road, too.

When it comes to assets, certain rights that attach only after the marriage is official need to be addressed. One common asset that requires careful attention is your retirement fund. If it is an ERISA retirement fund, then your surviving spouse is automatically the primary beneficiary, even if your own children have been designated as your primary beneficiaries. Accordingly, your premarital agreement should address this and provide that your new spouse agrees to “waive” these ERISA rights after the wedding.

Another area of concern involves gifts or an inheritance received after the wedding.

For example, if you will inherit the family business from your parents, then this needs to be addressed in your premarital agreement so it will be your “separate property” when received.

Naturally, the estate plans of both parties will need to be created or revised after the wedding so they are consistent with the agreed disposition of assets upon the death of one spouse or after the deaths of both spouses. Thereafter, careful attention is required to ensure that all separate and marital assets are titled and designated to pass as planned.

If you are married already, consider a “post-nuptial agreement” to address all of these “premarital agreement” matters.

For more statistics and resources for families and pre-marital planning, scan the QR code or visit: <http://bit.ly/1LtUBTY>



IF YOU DON'T KNOW
WHERE YOU ARE GOING,
ANY ROAD
WILL GET YOU THERE.

LEWIS CARROLL

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Jude Redkey, founding partner of Redkey Gordon Law Corp, has practiced personal injury law for 15 years. If someone you know needs a free consultation please feel free to contact our office. Mr. Redkey graduated from University of California, Davis and received his Juris Doctorate from University of Denver, College of Law.

Robert A. Gordon is a JD/MBA graduate from the University of San Francisco and holds an Economics degree with highest honors from the University of California, San Diego. Mr. Gordon's detail oriented method for drafting wills and trusts, which he tailors to meet each client's unique situation will ensure the protection of your assets. Whether you are a traditional family, blended family, single parent or individual, your values and assets are worth preserving and passing on to those you love.