Redo Your Estate Plan When You Remarry

If you are getting remarried, you obviously want to celebrate, but it is also important to focus on less exciting matters like redoing your estate plan. You may have created an estate plan during your first marriage, but this time it will probably be more complicated—especially if you have children from your first marriage or more assets. The following are some pointers for ensuring your interests are taken care of when you remarry:

- **Take an inventory**. The first thing you and your partner should do is each take an inventory of your assets and debts and share it with the other person. Don't forget to include life insurance policies and retirement plans in your inventories. It is important to be open and honest about money if you want to prevent bad feelings in the future.
- **Decide how you want to handle finances**. Once you know what you are dealing with, then you need to decide if you want to combine (or not combine) assets when you are married. For example, if one partner is selling a house and moving in with the other partner, will he or she contribute to the cost of the house? If one partner has significant debt, you may not want to combine finances or make any joint purchases. These decisions need to be made upfront so everyone is clear on what to expect.
- **Decide what you want to happen when you die**. You and your future spouse need to figure out where each of you wants your assets to go when you die. If you have children from a previous marriage, this can be a complicated discussion. There is no guarantee that if

you leave your assets to your new spouse, he or she will provide for your children after you are gone. There are a number of options to ensure your children are provided for, including creating a trust for your children, making your children beneficiaries of life insurance policies, or giving your children joint ownership of property. Even if you don't have children, there may be family heirlooms or mementos that you want to keep in your family. Again, open discussions can prevent problems in the future.

- **Consult an elder law or estate planning attorney**. Even if you don't have a lot of assets, you should consult an attorney, especially if you have children. You will definitely need to update your will. You may also need to update or create other estate planning documents such as a durable power of attorney and a health care proxy. If you have significant assets, a prenuptial agreement may be appropriate. In addition, the attorney can help you decide if a trust is necessary to protect your children's interests.

- **Change your beneficiaries**. You may want to change the beneficiaries on your life insurance policy, annuity, and/or retirement plan. If you are divorced, however, you may not be able to change some of the beneficiaries. Bring your divorce decree with you to the attorney so he or she can make sure you do not violate the decree. If you can't change your beneficiaries, you may want to buy additional life insurance or retirement plans that will include your new spouse.

- **Consider a prenuptial agreement**. While you are intending to stay married, things happen. Unlike a first marriage, you may be bringing property to this marriage that you spent decades accumulating and you may be merging two families. You need to decide together what your intentions are for the use of funds while you are living

together, if you get divorced and when one of you dies before the other. Failure to think and plan ahead can mean severe heartache and financial costs for you and your family.

- **Consider purchasing long-term care insurance**.The physical, emotional and financial cost of long-term care can deplete the savings of all but the most wealthy. While you may be willing to spend your lifetime of savings on the care of a spouse with whom you raised a family and accumulated the funds, you may not want to lose this to the care of a relatively new spouse. Long-term care insurance, while expensive, can permit you and your new spouse to get the care you need without impoverishing the other.

The most important thing to remember is to be open and honest with your future spouse and your family members about your wishes.

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Kinds of Trusts

Trusts fall into two basic categories: testamentary and inter vivos.

A testamentary trust is one created by your will, and it does not come into existence until you die. In contrast, an inter vivos trust, starts during your lifetime. You create it now and it exists during your life.

There are two kinds of inter vivos trusts: revocable and

irrevocable.

Revocable Trusts

Revocable trusts are often referred to as “living” trusts. With a revocable trust, the person who created the trust, called the “grantor” or “donor,” maintains complete control over the trust and may amend, revoke or terminate the trust at any time. This means that you, the donor, can take back the funds you put in the trust or change the trust’s terms. Thus, the donor is able to reap the benefits of the trust arrangement while maintaining the ability to change the trust at any time prior to death. **need to give some real-world examples of trusts*

Revocable trusts are generally used for the following purposes:

1. *Asset management.* They permit the named trustee to administer and invest the trust property for the benefit of one or more beneficiaries.
2. *Probate avoidance.* At the death of the trust grantor, the trust property passes to whoever is named in the trust. It does not come under the jurisdiction of the probate court and its distribution need not be held up by the probate process. However, the property of a revocable trust will be included in the grantor’s estate for tax purposes.
3. *Tax planning.* While the assets of a revocable trust will be included in the grantor’s taxable estate, the trust can be drafted so that the assets will not be included in the estates of the beneficiaries, thus avoiding taxes when the beneficiaries die.

Irrevocable Trusts

An irrevocable trust cannot be changed or amended by the grantor. Any property placed into the trust may only be distributed by the trustee as provided for in the trust

document itself. For instance, the grantor may set up a trust under which he or she will receive income earned on the trust property, but that bars access to the trust principal. This type of irrevocable trust is a popular tool for Medicaid planning.

Testamentary Trusts

As noted above, a testamentary trust is a trust created by a will. Such a trust has no power or effect until the will of the grantor is probated. Although a testamentary trust will not avoid the need for probate and will become a public document as it is a part of the will, it can be useful in accomplishing other estate planning goals. For instance, the testamentary trust can be used to reduce estate taxes on the death of a spouse or to provide for the care of a disabled child.

Supplemental Needs Trusts

The purpose of a supplemental needs trust is to enable the donor to provide for the continuing care of a disabled spouse, child, relative or friend. The beneficiary of a well-drafted supplemental needs trust will have access to the trust assets for purposes other than those provided by public benefits programs. In this way, the beneficiary will not lose eligibility for benefits such as Supplemental Security Income, Medicaid and low-income housing. A supplemental needs trust can be created by the grantor during life or be part of a will.

Credit Shelter Trusts

Credit shelter trusts are a way to take full advantage of state and federal estate tax exemptions.

Estate Planning for a Vacation Home

If you are lucky enough to own a vacation home, then you need to figure out what will happen to it after you are gone. Many parents hope to keep vacation homes in the family, but guaranteeing that can be tricky.

While meant to be fun and relaxing places to get away from everyday life, vacation houses can cause problems between siblings after their parents pass away. Some siblings may want to use the house, while others may need cash and want to sell. There may be disputes over who pays maintenance costs or when different families can use the house.

One option for passing on a vacation home is to leave it to your children in your will. The problem with this is that if the children own the house equally as joint tenants or tenants in common and one sibling wants to sell, that sibling can demand to be bought out. If the other siblings can't come up with the money to buy out the sibling, the sibling who wants out can force the sale of the house.

Before you decide to leave your vacation house to your children outright, you should have a family meeting to find out whether all the children actually want the house. If they do, you should discuss who will be responsible for maintenance and property taxes, and who has the right to use the property, among other issues. Putting a plan in writing can help prevent or resolve disputes down the road. The plan can also include a buyout option if any heirs decide they do not want to own the property. The buyout price can be less than if the property is sold to a third party and payment terms can extend over several years.

Rather than giving the property to your children outright, you can also put it in a trust or a Limited Liability Company (LLC). LLCs have become a popular estate planning tool for vacation homes. Using an LLC allows parents to transfer interest in the LLC to their children while still retaining control. Parents can use the annual gift tax exclusion to slowly gift their children additional interest in the LLC each year. The LLC agreement can designate a property manager, provide instructions on maintenance costs and property taxes, and include buyout options. Property in an LLC is also protected from creditors. (Unfortunately, in many states – including Maryland and D.C. – there will be a significant transfer tax to accomplish the transfer – ideally, the vacation property should be titled in an LLC upon purchase.)

Another option is to put property into a qualified personal residence trust (QPRT). A QPRT allows the parents to live in the home for a certain number of years and at the end of the term, the children own the home. The main purpose of a QPRT is to reduce taxes on property, but QPRTs are tricky and must be set up just right or there will be no tax savings. For more information about QPRTs, give us a call.

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Six Things to Consider Before Making Gifts to Grandchildren

Grandparents often are particularly generous to grandchildren as they see their family's legacy continuing on to a new generation. In many cases, grandparents feel they have ample resources and their children or grandchildren may be struggling financially. Assistance with summer camp fees, college tuition, wedding costs or the downpayment on a first home, can relieve pressure on the next generation and permit grandchildren to take advantage of opportunities that otherwise would be out of reach. Some grandparents also don't feel it's right that children and grandchildren should need to wait for an inheritance, when they have more than they need.

Helping out family members is to be encouraged, but can raise a number of legal issues involving taxes and eligibility for public benefits, as well as questions of fairness among family members. Here are six issues grandparents should consider before making gifts to family members:

- **Is it really a gift?** Does the grandparent expect anything in return, for example that the funds be repaid or that the money is an advance on the grandchild's eventual inheritance? In most cases, the answer is "no." But if it's "yes," this should be made clear, preferably in writing, whether in a letter that goes with the check or, in the case of a loan, a formal promissory note.
- **Is everyone being treated equally?** Not all grandchildren have the same financial needs, and grandparents don't feel equally close to all of their grandchildren. While it's the grandparent's money and she can do what she

wants with it, if she's not treating all of her grandchildren equally, she might want to consider whether unequal generosity will create resentment within the family. Many elder law clients say that what they do with their money during their lives is their business. They may help out some children and grandchildren more than others based on need, with the expectation that this will be kept private. But they treat all of their children equally in their estate plan.

- **Beware taxable gifts.** While this is academic for most people under today's tax law, since there's no gift tax for the first $5.25 million each of us gives away, any gift to an individual in excess of $14,000 per year must be reported on a gift tax return. Two grandparents together can give up to $28,000 per recipient per year with no reporting requirement. And there's no limit or reporting requirement for payments made directly to medical and educational institutions for health care expenses and tuition for others.
- **529 plans.** Many grandparents want to help pay higher education tuition for grandchildren, especially given the incredibly high cost of college and graduate school today. But not all grandchildren are the same age, making it difficult to make sure that they all receive the same grandparental assistance. Some grandchildren may still be in diapers while others are getting their doctorates. A great solution is to fund 529 accounts for each grandchild. These are special accounts that grow tax deferred, the income and growth never taxed as long as the funds are used for higher education expenses. Click here to read more about 529 accounts.
- **Don't be too generous.** Grandparents need to make sure that they keep enough money to pay for their own needs. While small gifts probably won't make any difference one way or another, too many large gifts can quickly deplete a lifetime of scrimping and saving. It won't do the family much good if a grandparent is just scraping by

because he’s done too much to support his children or grandchildren.

- **Beware the need for long-term care.** In terms of making certain that they have kept enough of their own savings, grandparents need to consider the possibility of needing care, whether at home, in assisted living or in a nursing home, all of which can be quite expensive. In addition, those seniors who can’t afford to pay for such care from their own funds need to be aware that any gift can make them ineligible for Medicaid benefits for the following five years. For details, click here.

There are even more issues to consider that may involve specific family situations. Some grandchildren shouldn’t receive gifts because they will use them for drugs, or the gifts may undermine the parents’ plans for the grandchild or their authority. In some instances, grandparents may want to consider “incentive” trusts, which provide that the funds will be distributed when grandchildren reach certain milestones, such as graduation from college or holding down a job for a period of time. Communication with the middle generation can be key to making certain that gifts achieve the best results for all concerned.

Talk to your attorney about devising the best plan for yourself and for your grandchildren.

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Three Reasons Why Joint Accounts May Be a Poor Estate Plan

Many people, especially seniors, see joint ownership of investment and bank accounts as a cheap and easy way to avoid probate since joint property passes automatically to the joint owner at death. Joint ownership can also be an easy way to plan for incapacity since the joint owner of accounts can pay bills and manage investments if the primary owner falls ill or suffers from dementia. These are all true benefits of joint ownership, but three potential drawbacks exist as well:

1. **Risk.** Joint owners of accounts have complete access and the ability to use the funds for their own purposes. Many elder law attorneys have seen children who are caring for their parents take money in payment without first making sure the amount is accepted by all the children. In addition, the funds are available to the creditors of all joint owners and could be considered as belonging to all joint owners should they apply for public benefits or financial aid.
2. **Inequity.** If a senior has one or more children on certain accounts, but not all children, at her death some children may end up inheriting more than the others. While the senior may expect that all of the children will share equally, and often they do in such circumstances, there’s no guarantee. People with several children can maintain accounts with each, but they will have to constantly work to make sure the accounts are all at the same level, and there are no guarantees that this constant attention will work, especially if funds need to be drawn down to pay for care.
3. **The Unexpected.** A system based on joint accounts can really fail if a child passes away before the parent.

Then it may be necessary to seek conservatorship to manage the funds or they may ultimately pass to the surviving siblings with nothing or only a small portion going to the deceased child's family. For example, a mother put her house in joint ownership with her son to avoid probate and Medicaid's estate recovery claim. When the son died unexpectedly, the daughter-in-law was left high and dry despite having devoted the prior six years to caring for her husband's mother.

Joint accounts do work well in two situations. First, when a senior has just one child and wants everything to go to him or her, joint accounts can be a simple way to provide for succession and asset management. It has some of the risks described above, but for many clients the risks are outweighed by the convenience of joint accounts.

Second, it can be useful to put one or more children on one's checking account to pay customary bills and to have access to funds in the event of incapacity or death. Since these working accounts usually do not consist of the bulk of a client's estate, the risks listed above are relatively minor.

For the rest of a senior's assets, wills, trusts and durable powers of attorney are much better planning tools. They do not put the senior's assets at risk. They provide that the estate will be distributed as the senior wishes without constantly rejiggering account values or in the event of a child's incapacity or death. And they provide for asset management in the event of the senior's incapacity.

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