

## Avoiding estate fights if parent remarries

By [Fred Minnick](#) • Bankrate.com

Without proper planning, a parent's remarriage can set up a tragic conflict between the new spouse and the children of the first marriage if the remarried parent dies -- particularly if there is a significant inheritance involved.

Experts say good estate planning, a prenuptial agreement and fine-tuning of the will can help prevent this sort of battle.

"A prenuptial agreement would be pre-emptive on the part of everybody and affect obviously the children when their parent passes," says Mike Silver, certified public accountant and partner with Mallah Furman, an accounting firm in South Florida.

"Everybody has an understanding going into the marriage of what everybody is entitled to along the way. After that, it gets a little sticky."

Where it really gets messy is when the parent remarries and doesn't change his or her life insurance or will, says L. Kelly LaVigne, attorney and vice president of AXA Equitable Life Insurance Co.

"Suddenly you've got a contract that may have been intended for another purpose going back to the estate, going through probate, tying up those funds so that the beneficiary of the estate can't use them," LaVigne says.

"That's why estate planning is so important, even if you don't have a lot of assets. You want to plan ahead and have some kind of will -- even a holographic will, where you just write down everything and sign it in front of a witness. As long as the will shows the intent of the deceased the courts are pretty accommodating to those intentions."

In some cases, the child's other parent may actually be able to protect the offspring's assets. If the previous marriage ended in death, the decedent spouse could have placed assets into a trust that in case of remarriage of the surviving spouse, the right to invade principle terminates

But if the marriage ended by divorce, the first step is for the parent and child to sit down and "have a heart to heart about their intentions with their assets," and start looking at ways so everybody can get their share, says Ed Weidenfeld, a former White House counsel who now runs Washington D.C.-based Weidenfeld Law Firm.

Once the children are grown and have families, parents lose the "provider" mentality and may not necessarily think of bequeathing the majority of their assets to them, Weidenfeld says. And when parents remarry, "there is a desire to take care of the surviving spouse for life," Weidenfeld says.

### Rock-solid trusts

In some cases, the best way to stake a claim is to set up a qualified terminable interest property, or QTIP, trust, LaVigne says.

"A QTIP is the only rock-solid way that you can really take care of that surviving spouse who's not necessarily the mother or father of your children and ensure that the remainder is going to be left to your kids and no one is going to have the ability to change that after you pass away," LaVigne says.

Quite literally, the creator of the QTIP trust has control of his or her assets from the grave. State trust laws vary, but the QTIP works by rolling over the children's assets into the surviving spouse's estate and naming them as final beneficiaries.

Through this method, the children don't have to pay a gift tax and receive estate tax exemptions up to \$1 million. When the stepparent dies, the cash goes where the parent wanted it to go.

"Through a QTIP trust, the surviving spouse would be entitled to the said income for their lifetime with the remainder going to the children," Silver says.

However, if a 70-year-old parent married a 30-year-old, a QTIP is not a good choice. After all, the children cannot receive the assets if the stepparent outlives them. Scott Sherman, counsel at Reed Smith LLP, recently had this challenge with an elderly celebrity who married a man half her age.

Before the woman passed, Sherman set up an irrevocable living trust, which cannot be changed or canceled once it is set up without the consent of the beneficiary. It held up in court when the young stepfather challenged it.

To avoid gift taxes with an irrevocable living trust, Sherman says to have the parent retain limited power of appointment. This keeps the assets from being a completed gift, and "it counts in his estate at death," he says. "Now he can't transfer anything because the assets belong to the trust."

Children can also work with their parents to set up a revocable living trust. Silver says the parents can do whatever they want in terms of adding to it, taking from it, amending it or altering it.

"If a parent feels that they want a second pair of eyes, they can always put their children as designated or interested parties on a particular account so that they can see what's going on in that account," Silver says.

Silver says a spouse can transfer an unlimited amount of money without any tax consequence. That's why it's imperative the children gain access to the parent's accounts, Sherman says.

"You see that dad has \$1 million and suddenly there's a \$400,000 payment somewhere and it's down to \$600,000, you can at least investigate," Sherman says.

### **Who wins?**

When these cases go to court, more often than not, the stepparent wins, says Weidenfeld.

"These court battles go on interminably and turn into a psychodrama that is a 'Who did daddy love the most? Me or the wicked witch he married after mother?'" Weidenfeld says. "I've seen

kids absolutely devastated by not having expectations met."

Sometimes the wrong person is named as a primary beneficiary or the trust doesn't name the contingent beneficiary after the primary is deceased, LaVigne says.

"It's extremely important that people understand exactly what they're doing when they set up any type of a payment option and don't leave flexibility for the people who are left behind to make amendments postdeath," LaVigne says.

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