

Second Marriages and How They Can Impact Estate Planning

Over the 30 years that I have been in practice, there are certain situations that I have encountered over and over again. A family being torn apart following a surviving parent's death is one of the most stressful situations I counsel people about. This is how it can happen:

Two parents have been married for many years. Over the course of their marriage they are blessed with children, acquire assets and generally have a good life. In the normal course of life one of the parents passes away. The children and the surviving parent become closer than they had been for years, discussing openly what will happen with the parents' estate when the survivor passes away. Two or three years go by and all is well. Then the surviving parent starts seeing someone new, that person becomes "part of the family", and soon the two are married. Time goes by and then the surviving parent passes away. Although the parent had every intention of taking care of business, he or she never got around to it, and it turns out there is no Last Will or Trust to direct the disposition of the estate, which means the estate will be "intestate". In other words, the state statutes will determine the distribution of the assets, no matter what your parents might have intended. What happens to the assets? The answers may surprise you.

First let's understand what probate is. Simply put, for the vast majority of people, probate is nothing more than a way to ensure bills are paid as they come due, and, more importantly, that assets are transferred when no other method is available. There are other issues that probate addresses, but, for most of us, it's about transferring assets and paying the bills.

To start with, who are the actual owners of the investments and bank holdings at the time of the surviving parent's death? Are both names on them, or just the surviving parent's? It makes a big difference. Usually, investments and bank accounts with both names on them are held in what is called "survivorship". The term "survivorship" means that when one of the parties on the account dies, full ownership of the account passes to the other - the "survivor". This is a great convenience for the bank, but not always so good for you. For example, that \$50,000.00 savings account that every one agreed was for the grandchild's college may now belong to the step-parent if both names were on it. Regardless of the intent when setting up the account, the survivorship designation will control what happens to the money. (You also find survivorship designations on real estate deeds, car titles, boat titles, etc. The outcome is the same for all of them: whoever outlives the other gets the item).

What if the account is in the deceased parent's name alone? Again, with no Last Will in place, the intent behind setting up the account will not matter. Since there is no other way to transfer title to the account, it will have to go through a probate to transfer ownership. Using the example of the college fund above, what was intended will not be the result. The children of the original parents receive \$25,000, the step-parent receives \$25,000, and the grandchild receives nothing.

It's not unusual for people to think that, after they are gone, everyone will get along and carry out whatever was intended. As any estate planning/probate attorney will tell you, money does funny things to people. There is an incredible sense of entitlement to someone else's property that gets in the way. The reality in the example above is that, unless the step-parent is truly dedicated to carrying out the plan, the step-parent's own adult children are likely to get involved to "protect" their parent. The more assets at stake, the more adversarial the process can become. In the end, hard feelings and animosity arise and people who used to be close, never

Speak to each other again.

What could have been done to avoid this? By taking the initiative to work with your parents and an estate planning lawyer, a plan could have been formalized that literally would provide for any contingency (within reason) and give all family members peace of mind. The value of avoiding heartaches and distractions that can arise during a time of emotional upset and mourning for those left behind is worth the cost involved in the planning. My advice is simple: Turn "I'll take care of it someday" into "I'll take care of it today". You will be glad you did.

I welcome enquiries on estate planning and probate matters. In situations with mobility or work conflicts, appointments in your home are also available. Feel free to contact my office at 503-768-3100, or visit my website at www.grafelaw.com.