

Estate Planning for Second Marriages

Here Are 10 Important Points to Ponder — and Remember

By MICHELE J. FEINSTEIN and ANN I. WEBER

When you decide to get married for the first time, estate planning is probably the last thing on your mind. But if your marriage does not endure because of death or divorce and you later want to remarry, marriage, life, and death may be a little more complicated.

Here are some pointers to keep in mind if you or someone you love are contemplating remarriage.

• **Do you have a will? If not, the Commonwealth has written one for you.**

If a spouse in a second marriage dies without a will and has children from a prior marriage, under Massachusetts law, the survivor will receive the first \$100,000 and one-half of the balance of the estate.

If this is not your plan of choice, you should have a will and perhaps a revocable trust which clearly sets out your wishes.

• **If you want to leave your estate entirely to your children, your spouse may have the right to challenge your will and receive the share prescribed by statute.**

Under Massachusetts law, a spouse can waive the provisions in the decedent's will and elect to take the share prescribed by statute. For example, if you die leaving children from a prior marriage, your spouse can force a distribution equal to the income interest in one-third of your probate estate (and potentially the assets of your revocable trust if you have one) plus \$25,000 distributed outright from that share.

Your spouse cannot benefit from any provisions in the will in his or her favor, but can continue to receive the benefit of property passing outside of the probate process, i.e., proceeds of life insurance or retirement plans and jointly held assets, etc.

• **If you have a will which was signed prior to your marriage and you die before signing a new one, your spouse may receive a share of your estate even though he or she is not mentioned in the will.**

In such a case, your spouse will receive the share he or she would have received if there had been no will from the portion of the estate not left to your children or grandchildren, unless your will was made in con-



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templation of the marriage or you provided for your spouse outside the will with life insurance, retirement benefits, jointly held assets, etc.

• **Do you have minor or disabled children?**

While your former spouse will probably be guardian of your children, you may not want him or her to control assets passing to or for the benefit of your children. You can name a conservator or a trustee of a children's or special-needs trust to control these assets for the benefit of your children.

• **Do you have a prenuptial agreement?**

If so, you and your spouse may have relinquished rights to each other's estates. You can, however, include your new spouse in your will, as any provisions in favor of your spouse will trump the prenup.

• **Do you have a divorce decree or separation agreement?**

If so, you may have obligations under these agreements. Your attorney should review these documents in order to be sure that your new plan does not contravene these obligations.

• **Do the combined assets of you and your spouse exceed \$1 million? Do they exceed \$5.34 million?**

If so, you may need a revocable trust or perhaps some additional planning to minimize your state and federal estate taxes, respectively.

• **Are you receiving Social Security retirement benefits based on a former spouse's earning records?**

If so, your remarriage may affect your benefits. If you are receiving benefits based on

your divorced spouse's earnings record, your benefits will end upon your remarriage and be recalculated based on you or your new spouse's earnings, whichever is higher. If your benefits are based on a deceased spouse's record and you are 60 or older at your remarriage, you will receive the higher of the three worker's benefits. However, if you are under 60 when you remarry, you will forfeit your widow's benefits permanently.

• **Are you concerned about the costs of long-term care? Your marital status may affect your eligibility for benefits.**

MassHealth has different eligibility criteria for single and married persons applying for nursing-home coverage, with some very favorable options applying to married couples. In particular, assets can be transferred to the well spouse without a transfer disqualification, special types of annuities can be purchased to accelerate eligibility, and the well spouse will be entitled to keep \$117,240 of countable assets.

While this works well when the children likely to inherit belong to both spouses, traditional planning can cause problems down the line for blended families if the ill spouse's children are excluded as beneficiaries of the well spouse's estate.

• **Do you want your children or other individuals to be beneficiaries of your qualified retirement plan(s)?**

If so, your new spouse will need to sign a notarized waiver of these benefits in order for these beneficiaries to take. Qualified plans include defined benefit or contribution plans, profit-sharing plans, and 401(b) and 401(k) plans. ■

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