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Estate Planning for Blended Families

In today's America the "traditional family" of a husband, wife and their children is becoming a statistical minority of all households. The term "blended family" has been coined to describe the family unit where the husband and wife have children who might be from as many as three marriages: his previous marriage, her previous marriage and their marriage.

The variations can include previous marriages that ended because of death and those ending in a divorce. The children can range in age from infancy to just ten years younger than their stepmother. The blended family has special needs in estate planning because of the conflicting interests of the different survivors.

Mary Smith has a two-year old boy to raise alone after the death of her husband, John, in an auto crash while traveling on business. John's ex-wife, Diane, has two teenagers who are gifted students and looking forward to college. The last thing Mary needs is a lawsuit by Diane against her husband's estate because he did not maintain the life insurance policy required by the divorce settlement, or he improperly changed the beneficiary in breach of that agreement.

Harry Jones is a senior executive with a high tech company in Alpharetta. His wife, Martha, has a ten-year old child from her previous marriage (which ended with the death of her first husband) and a four-year old from this marriage. Harry has two kids who have almost finished college, of whom he is very proud. However he also loves both of the children he and Martha are raising. In the event of his death only three of those four children are entitled to benefit from his estate, in the absence of an express provision in his last will and testament.

Robert Green, age 67, never thought that he would find another woman with whom he could enjoy the retirement he and his late wife, Paula, had planned on for the forty years before her tragic death. Fortunately, he met and married Joan, age 65, who alone had raised two wonderful children after being divorced when she was 32 years old. Robert is a multi-millionaire and has two children of his own who are successful professionals. Joan's two daughters are both dedicated school teachers and her wealth mainly consists of a paid-for house and \$150,000 in retirement accounts. Robert would like to provide for Joan's financial security if she outlives him, which according to the mortality tables she is likely to do. But he would also like to provide some inheritance for the children from his first marriage.

In these hypothetical cases I have assumed that every one of them has the best of intentions. Despite these good intentions they all need to face the reality that the legal system will not satisfactorily provide for their blended families without an effective estate plan. By effective I mean something done with binding legal documents, such as a will or a trust. The trust could be in a free-standing document, or created in the last will and testament. Here are some ideas of possible solutions for each of these hypothetical families:

Ideally, Mary and John Smith consulted with an attorney after the birth of their baby boy and drafted wills (two years before his tragic death). John's (hypothetical) will thus avoided the imposition of the statutory rules of inheritance which would leave Mary with only one-third of his estate with two-thirds to his children. At the same time (again ideally) they assessed their life insurance needs so that the

coverage was organized to meet John's legal obligations because of his previous divorce agreement and still address Mary's economic needs in case of his death.

Harry Jones might want to adopt his stepchild, but even without doing so he can include that child in his will to share on some basis with the child he has with Martha. He might want to consider a life insurance trust to immediately benefit his older children in the event of his death. Martha could survive him by many years and the need to provide for her support might call for all of his financial assets. Using a life insurance trust could avoid any reduction in the death benefit by the federal estate tax and would provide detailed instructions to control the distribution of the policy proceeds.

Robert and Joan Green need a plan that addresses the desire to provide for their separate children but protects Joan's financial security during retirement. If Robert has a large IRA account he might designate Joan as beneficiary of the account (either outright or through a trust). If he left a couple of million dollars to his children from his previous marriage, then he could minimize the estate taxes (remember he is a multi-millionaire!) while still addressing a real-world concern. A "marital trust" for Joan might be ideal. It would give her of the trust income and after her death the trust property (after payment of any estate tax) would go to Robert's children. Joan's will might protect certain property she wants Robert to get with the balance of her estate going outright to her children or grandchildren.

The worst estate plan for a blended family is the one given to them by state law when they do not write their own. It is likely to result in resentment, if not civil war between offspring and surviving spouse. In this area an ounce of prevention is worth a ton of cure.

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Patrick J. Gibbs practices law in Roswell, Georgia with a concentration on Wills, Trusts and Estates. This article is intended to be educational. Legal advice should be obtained as to individual needs before taking any action.