

CHOLEWKA LAW

LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE



THE PROPER PLANNING MIX FOR BLENDED FAMILIES



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Planning for blended families can present unique challenges, in part because the interests of a current spouse and any mutual children often conflict with the desire to provide for one’s children from a previous marriage. For example, if all of an estate’s assets are left to the new spouse, the children from a previous marriage may not be provided for in the manner the deceased spouse would have wanted. After all, there is no legal obligation to support stepchildren. Furthermore, the surviving spouse might, upon his or her death, leave all of the assets to his or her children, thereby excluding the children of the spouse who passed away first. Similarly, if assets are left only to prior children at the death of their parent, there may not be enough assets remaining in the estate to provide for the current spouse or family.

Even with a harmonious blended family, failure to create and implement an estate plan may lead to unforeseen problems. In situations where death occurs without a will or trust in place, statutory intestacy rules may remove up to two-thirds of the deceased spouse’s estate from the current marriage and give it to the children from the previous marriage. This can happen even if the prior children are now adults and have less need for the assets than the spouse and minor children of the current marriage. In situations where the prior children are minors, an ex-spouse might be able to gain control of the assets. At the very least, each spouse in a blended family should have a will. Without one, assets will more than likely be distributed to heirs in a manner contrary to what the deceased spouse would have wanted.

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THE PROPER PLANNING MIX FOR BLENDED FAMILIES (CONT.)

A properly designed and adequately funded trust, or a combination of trusts, is a much better approach than a will for blended families. This approach can provide for the surviving spouse while ensuring a portion of the assets go to children from the previous marriage. One such trust, which provides an excellent form of asset protection, is called a Qualified Terminable Interest Property Trust (QTIP). The QTIP Trust can generate income for the benefit of the surviving spouse during his or her lifetime. When the surviving spouse passes away, the QTIP's assets can be distributed between mutual and prior children according to the wishes of the previously deceased spouse. In addition, if the children from the previous marriage are young, assets from the QTIP Trust can be held in another trust for the children, under the control of an independent trustee. This can prevent the assets from falling under an ex-spouse's control.

You might also want to consider a Long-Term Discretionary Trust (LTD Trust) to administer your children's inheritance, with a party of your choosing serving as trustee. In this way, even if your children reside with your ex-spouse, your trustee will control the inheritance through the LTD Trust

and ensure it is used only for your children. Should one of your children predecease your ex-spouse, the inheritance would remain in your LTD Trust for your grandchildren and, if there are none, for your surviving children or other beneficiaries of your own selection. An LTD Trust can also protect your children's inheritance from their own poor decisions. For example, through Spendthrift Provisions contained in your LTD Trust, the inheritance may be protected against the reckless spending of inherited assets, divorces, lawsuits and bankruptcies.

Another tool to consider, one capable of minimizing estate taxes, is an Estate Tax Exemption Trust (ETE Trust). This will shelter the maximum available exemption amount upon your death for the enjoyment of your loved ones, and is often used in conjunction with the QTIP Trust for the benefit of your new spouse.

To learn more about the unique planning problems associated with blended families, and how we can help address your particular concerns and goals, contact us for a consultation.

SHOULD YOU SERVE AS TRUSTEE?



Maybe you've been named as trustee of an estate and are wondering if you should take on this responsibility. The first factor to consider is whether you have the time to do so. Administering a trust typically involves all of

the following duties, and sometimes many more:

- Locating and protecting trust assets
- Collecting life insurance policies, annuities, and retirement accounts that name the trust as the primary beneficiary
- Coordinating settlement of the estate with the personal representative if a probate administration is necessary
- Obtaining the values of all trust assets at the time of the trustmaker's death. These assets include real estate and business interests
- Ascertaining and paying off all of the trustmaker's debts from funds remaining in the estate
- Assessing income and estate tax liabilities
- Preparing and filing all required income and estate tax returns
- Paying the ongoing expenses of administering the trust until it can be terminated and distributed to beneficiaries
- Raising the cash necessary to pay off debts, the ongoing expenses of administering the trust, and estate and income taxes
- Investing and managing trust assets until they can be distributed to your beneficiaries
- Distributing all assets left in the trust after all of the aforementioned debts, taxes and expenses have been paid

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SHOULD YOU SERVE AS TRUSTEE? (CONT.)

Satisfying all of these duties is both time consuming and, in many instances, extremely complicated. Another factor to consider is that a trustee can be held personally responsible for failing to carry out the mandates of the trust to the letter. Even if a mistake was inadvertent, penalties can be severe.

Clearly, the decision to serve as trustee should not be taken lightly. We can help you understand the responsibilities and risks involved, and guide you through the process every step of the way. If you have been named as a trustee, we are here to assist you. Contact us for a consultation.

SPECIAL NEEDS TRUSTS: POWERFUL TOOLS TO PROTECT YOUR LOVED ONE WITH SPECIAL NEEDS

There are a wide range of special needs trusts, capable of accomplishing a variety of goals. In general, however, they seek to maintain eligibility for means tested government assistance programs, including Medicaid and Supplemental Security Income (SSI), while at the same time providing funds for supplemental services not provided by Medicaid and SSI. These supplemental services can dramatically improve the quality of life for your special needs loved one, and may include all of the following and more:

- Annual check-ups at an independent medical facility
- Attendance of religious services
- Supplemental education and tutoring
- Out-of-pocket medical and dental expenses
- Transportation (including purchase of a vehicle)
- Maintenance of vehicles
- Purchase materials for a hobby or recreation activity
- Funds for trips or vacations
- Funds for entertainment such as movies, shows or ballgames
- Purchase of goods and services that add pleasure and quality to life: computers, videos, furniture, or electronics
- Athletic training or competitions
- Special dietary needs
- Personal care attendant or escort



In addition, special needs trusts provide greater flexibility and freedom of choice when it comes to medical services. Why? The beneficiary of a special needs trust can use services provided by Medicaid or the services of a specialist who doesn't accept Medicaid payments. Another benefit worth noting is that medical providers who have contracts with the state to provide Medicaid services typically deliver those services for much less than beneficiaries paying privately. In situations where the special needs trust must reimburse the state for services provided over the beneficiary's lifetime (the payback provision), reimbursement will be for this lower cost and free of any penalties or interest.

To learn more about the benefits of special needs trusts, and which one is right for your particular situation, contact us for a consultation. We have the experience to make sure your special needs trust provides your loved one with access to a range of supplemental services without jeopardizing his or her access to government assistance programs.