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## ESTATE PLANNING FOR BLENDED FAMILIES

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It is becoming increasingly common for modern families to be comprised of children from previous relationships or marriages, which may be referred to as “blended families”. If you have a blended family, estate planning may not be as straightforward, and you may wish to consider the following issues and options with a lawyer to ensure that your estate planning properly addresses your individual circumstances.

### **Do Stepchildren Inherit if I Die Without a Will?**

In British Columbia, if you pass away intestate (i.e., without a valid will in place), then your estate will be distributed according to the default rules under the *Wills, Estates and Succession Act*. Under these intestacy provisions, only biological or legally adopted children are considered descendants, and stepchildren do not receive any inheritance. Therefore, this default distribution scheme may be inconsistent with your testamentary wishes if you wish to provide for your stepchildren.

### **Use of a Joint Partner Trust**

One strategy for spouses may be to settle a joint partner trust (commonly referred to as a wills substitute), whereby the spouses would jointly execute a deed that sets out the distribution of their assets when they both pass away. Note the requirements to set up a joint partner trust, however, including you must be a Canadian resident and at least 65 years of age.

Spouses may consider an irrevocable deed, so that the distribution scheme cannot be changed in the future, which would have a similar effect as a mutual wills agreement. However, careful consideration should be given before doing so, as it is a marked departure from the general practice of making a will, which can be modified or revoked so long as the will-maker is legally capable of doing so.

### **What Is a Spousal Trust?**

Another strategy for spouses may be to prepare wills that include “spousal trusts”. For example, when the first spouse passes away, some or all of their assets would be held in trust for the benefit of the surviving spouse instead of being given as a direct inheritance. When the surviving spouse passes away, the remaining assets of that trust would be distributed among all of their children, including stepchildren.





The spousal trust could have some restrictions, such as the appointment of a co-trustee so the surviving spouse does not have unfettered discretion, or a restriction on the use of capital. As the assets continue to remain in the estate of first deceased spouse, the surviving spouse therefore cannot alter the subsequent distribution of assets when he or she dies.

### **What Is a Mutual Wills Agreement?**

In some blended families, spouses may wish to prepare their wills together, whereby the survivor inherits from the first deceased spouse, and when the surviving spouse passes away, their will would distribute their assets among all of the children, including stepchildren. The rationale would be that all of the children should be treated equally after both parents of the blended family pass away. Some spouses may consider entering into a “mutual wills agreement” in order to prevent the surviving spouse from changing their will after the first spouse dies, and possibly disinheriting the first deceased spouse’s children (i.e., the stepchildren of the surviving spouse). While a mutual wills agreement is legally enforceable in theory, its degree of effectiveness contemplates the future of a family relationships in a certain way. As we know, the future is not always easily predictable, and in many cases, mutual wills agreements may not be as effective as they are intended to be.

### **Use of Designated Beneficiaries and Joint Ownership of Assets**

Financial products with designated beneficiaries (such as TFSAs, RRSPs, and life insurance policies) generally pass to the designated beneficiary outside of your estate. These types of products are another effective tool to consider using in estate planning for blended families.

When assets are owned jointly, they generally pass to the survivor(s) upon the death of one of the joint owners. Spouses may also consider using joint ownership as part of their estate planning for blended family situations. However, caution should be used as joint ownership may create issues depending on who receives the joint interest and the supporting documents.

### **Conclusion**

It takes a lot of work to build a harmonious blended family, and it is important to have an appropriate estate plan in place in order to minimize the risk of conflict and litigation after death. It is important to take into consideration the unique challenges blended families present for estate planning. If you have any inquiries or are ready to proceed with the next steps towards securing your family’s future, consider consulting with a lawyer to consider which options are appropriate, and the risk of your estate planning being challenged.

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