

Yours, mine and ours – Who gets what?

By Mary Lynn Kirby

I warned you last month...we are now going to delve deeper into the abyss of estate planning.. often more complicated than any other estate tax planning issue....planning for the blended family. It's really not all that bad, but, no planning (or living in denial) is worse than bad. My theory: Short term pain for long term gain. The short term pain may be beginning with just reading this article. (I hope not.)

The short term pain: address the issue with your spouse. How do you want your assets to be distributed at the time of your death? How about at the time of both you and your spouse's death? Let's look at some options you may want to consider. I hope they will

at least give you a springboard for your discussions with each other.

Let's first discuss the unmentionable: the next spouse, not the "ex," but the next. One spouse is deceased and the surviving spouse remarries. It's not fun to talk about, but the reality is that it does happen. What happens to all those assets you may have left outright to the surviving spouse? Outright is outright...look it up, it means no strings attached. The

surviving spouse may forget to do a will, then the assets pass by the laws of intestacy. This means the next spouse will receive no less than one-third

of the surviving spouse's estate. Another unthinkable possibility: the survivor intentionally makes a will leaving most or all of the assets to the next spouse. (Remember, this is your "stuff" we are talking about- the assets you left outright to your

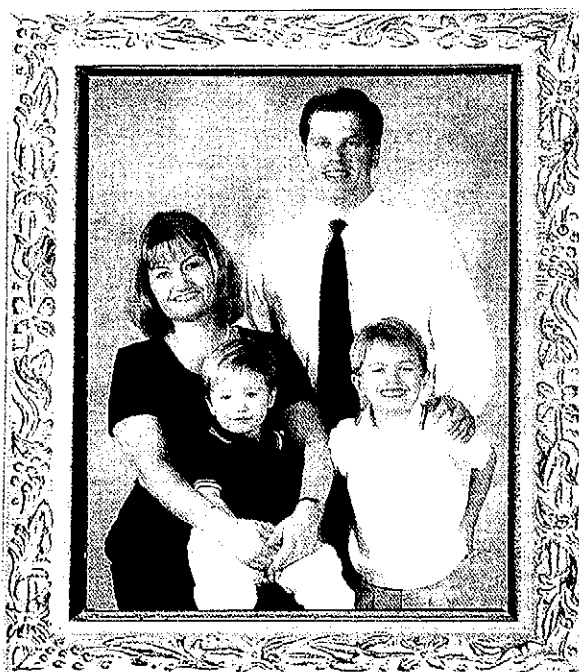
spouse when you were alive.) You may be wondering if we can avoid this? The answer is a resounding "Yes." Is the solution simple? The answer is yes and no.

A trust can be created which will allow the surviving spouse the ability to use the assets in the trust for whatever the surviving spouse's needs are, but the trust will control what happens to the assets at the time of the surviving spouse's death. That's about as much as I can explain in

this article, but suffice it to say, there is protective planning that can be done, but planning is the operative word. No planning can lead to undesired results. (By the way, this type of planning is not just for blended families; it can be done to protect assets from any "next" spouse.)

Another complication is, of course, how to deal with the children of mine, yours and ours. Often I have clients with grown children from a prior marriage and younger children born of the current marriage. The priority after the death of both spouses is usually that the "mutual" children receive the advantage of being "supported, maintained and educated," especially since the older children from the prior marriage have already essentially had the advantage of living parents to raise them. A thought would be to create a "support, maintenance and education" trust for the benefit of the mutual child or children only. The children from a prior marriage-not to

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be forgotten- could receive a lump sum. I like to give this lump sum at the death of the first spouse to die. I also like to put a "no contest" clause in the will of the first spouse to die. This clause essentially says that if the person receiving the distribution contests the will and loses, he or she will lose the distribution made to them in the will. It's that simple. This clause usually keeps everyone named in the will happy. I like happy people (even if involuntarily happy...happy IS happy!) If insurable, a nice way to provide the funds for those distributions may be with a life insurance policy on the life of the spouse. By providing the life insurance, we know the liquidity will be there for the distribution to be made. I, then, like to name the estate as the beneficiary of the life insurance policy, instead of the specific child. The reason for this: my "no-contest" clause kicks in and the child stays happy, and remember- see above- we like happy.

Blended family planning is probably one of the most difficult planning situations, but also one of the worst situations when planning is not done. Next month, we are going to completely change gears and talk about planning with life insurance; the options available for designating beneficiaries and who should own the insurance policy. There are some really fun things we can do with life insurance to make it work for us. For me, personally, fun and life insurance don't always go together, but next month, I think you will see how these two words can be used in the same sentence (and, no, I don't sell life insurance). — *fm*



Mary Lynn Kirby, P.C., has been practicing law since 1978. She practices predominately in the area of estate planning. You can reach her at 770-461-8879 or 120 Howard Lane, Fayetteville, Ga. 30215.

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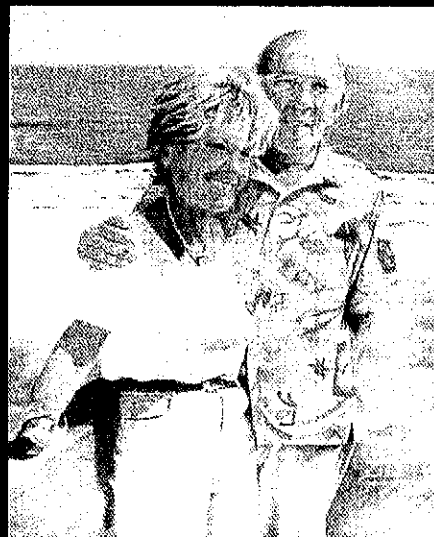
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