Estate Planning in the Age of Stepfamilies

Helping blended families plan is a challenge we enjoy in our practice. Failure to properly plan can easily deprive one set of children from any inheritance, and can cause much frustration and heart-break. More than 4 in 10 Americans have at least one step-relative in their family – either a stepparent, a step or half sibling or a stepchild -- according to the Pew Research Center. The National Center for Family and Marriage Research estimates that about one-third of all weddings in America create stepfamilies.

A recent trust case from North Dakota highlights the importance of taking current and potential step-relationships into account when planning your estate. William and Patricia Clairmont created two trusts for their grandson, Matthew. In both trusts, "the brother and sisters" of Matthew were contingent beneficiaries (meaning they would be the trust beneficiaries if Matthew died).

After the trusts were created, the Clairmonts' daughter, Cindy (Matthew's mother), divorced Matthew's father, Greg, and Greg remarried and had two children with a second wife. In March 2011, Matthew died suddenly and unexpectedly at the age of 25 without a wife, children or a will.

Under North Dakota law, Greg's two children with his second wife were technically "brothers and sisters" of Matthew and, thus, eligible beneficiaries under the trusts. The Clairmonts argued for an interpretation of the trust that would exclude Matthew's stepsiblings as beneficiaries or, alternatively, for reformation of the trust to include language that only lineal descendants of the Clairmonts could benefit from the trusts.

Ultimately, the North Dakota Supreme Court granted the Clairmonts' petition to reform the trusts based on evidence that the Clairmonts made a mistake of law by interpreting the phrase "brothers and sisters" to include only full blood siblings and based on testimony by the Clairmonts themselves on their intention to benefit their lineal descendants alone. To read the May 28, 2013 decision, *In re Matthew Larson Trust Agreement*, click here.

Although things turned out well for the Clairmonts in the end, it took much time and money to get there. The case stresses the importance of addressing step-relations in your estate plan whether or not you are already a member of a stepfamily.

A potentially problematic issue with a stepfamily is the formation of a "Response Team" that serves both spouses well. Here at Severns Associates, we consider the response team to be the group of individuals designated to carry out provisions of estate planning documents, whether as a power of attorney, health care power of attorney, trustee, or personal representative. When we work with our clients to formulate their plans, we recommend that the response team members be involved in the process, whether in person or by phone or Skype, so that all members are on the same page and are those persons best suited to work together with other family members for the good of all.

Another common problem in a blended family is the distribution of an estate through an "I love you" will – one in which the newly wedded spouses leave the entire estate to one another, regardless of children from previous marriages or relationships. This often means that only the surviving spouse inherits, and then is free to leave the entire estate to their children and heirs, and nothing to the children of the deceased spouse. A trust can solve this problem by passing the estate to the surviving spouse for their lifetime, and thereafter to the other heirs as determined when both spouses were alive.

If you are blending a family together, be sure to update your response team members on all of your documents, as well as your beneficiaries on your insurance, investments and accounts. If this is an issue which you need to address, please call our office to set up an appointment.