



THE E.P. EXPRESS

FOS's Estate Planning Newsletter
An ounce of prevention. . . .

Volume 7, Issue 1
Spring 2019

Editor: Diane Slomowitz

THREE BLENDED FAMILY TALES

Life is complicated. Consider the following situations, which may be more common than we'd like to admit:

- (1) You and your spouse both have children from prior marriages. You sign what you view as a "traditional" will, leaving your assets to your wife if you predecease her. After you die, your wife signs what she views as a "traditional" will, leaving all her assets to her children. Your children end up with nothing.
- (2) Again, a second marriage, but this time both estate plans provide for your respective children. You and your husband merge your accounts and other assets in a "what's mine is yours" philosophy. Soon, your husband is diagnosed with dementia which, aside from the emotional toll, engulfs you in continuing, extreme medical and care expenses. Your assets dwindle, leaving little for your own care or for your children.
- (3) Your second marriage, knock wood, is going strong. Your only child, though, is on her third marriage, this time to (words you would never tell your daughter) "a total loser." You worry that your daughter, this husband or maybe her next husband will fritter away any inheritance she receives from you.

Over 50% of U.S. families are remarried or re-coupled.* While blended families are usually happy and fulfilling relationships, they often trigger estate planning issues. With a little planning, these issues can be addressed or avoided altogether.

Take No. (1) above. Specific will and/or trust provisions can protect the children of each spouse from an unintended disinheritance. As one example (of many), each spouse's documents can divide the grantor's estate, among the spouse, on the one hand, and the grantor's children, on the other.

The estate planning (if not heart-breaking) effects of No. (2) can be avoided. One

Continued on page 3

CH-CH-CH-CH-CHANGES

As this newsletter often notes, the only constant in life is change.

This issue of *The E.P. Express* addresses the impact on estate planning of four life changes - marriage, divorce, blended families, and aging; and one legislative change - the recent increase in the estate tax exemption.

These and other changes can trigger the need to create, review and/or modify estate plans.

Read on. One or more subjects may apply to you.

AS TIME GOES BY...

The "golden" years.

Retirement, or not. Traveling abroad, or reading in the kitchen. Walks with the dog, or dinner with friends.

It's up to you. That's the point.

Eighty may be the new 60, and 70 may be the new 50, but the years catch up with us all. And we should catch up with our estate planning.

Maybe the person you named as personal representative of your will or trustee of your trust, who was decades older than you when initially named, is now too old to ably serve or doesn't want the obligation.

Perhaps a younger trusted person might be a better choice.

Continued on page 2



DIVORCE CHANGES MORE THAN YOUR MARITAL STATUS

U.S. divorce rates remain uncomfortably high.

While rates happily dropped for individuals under age 45, they doubled for people aged 55-64, and tripled for those 65 and older.*

Estate planning is likely one of the last things on a soon-to-be divorced person’s mind. Without preparatory action, however, divorce can have unintended consequences, even for those with existing estate plans.

In Wisconsin, for example, unless an existing will, trust, or divorce court order provides otherwise, a divorce generally revokes the following, as to a former spouse or that spouse’s relative:

- (1) a disposition in a will, trust or revocable document;
- (2) a disposition created by law (the power to elect against the estate);
- (3) a power of appointment;
- (4) an appointment to a fiduciary or representative position (such as a trustee or executor); and
- (5) a joint tenancy, which becomes a tenancy in common.

That sounds great, doesn’t it? Your ex shouldn’t have any rights regarding your financial business. That’s why you got divorced in the first place!

Well, there are exceptions (there always are). One is that the law won’t apply where a will or trust’s grantor “had an intent contrary to” it. How is that proved?

Continued on page 3

Time Goes By, cont. from page 1

Maybe you no longer want to give a bequest to a particular charity, which you idolized for years but now think is wasteful. Don’t do it.

Maybe only one of your adult children was there for you and your wife during a long illness, and maybe that child went above and beyond for you and your wife’s physical and emotional care. Perhaps that child should receive a special piece of art in thanks for his or her selflessness.

Maybe you have a long-term friend, with whom you are very close, who you want to remember in your will or trust. Perhaps you should do just that.

Or maybe the person you named as your agent under your Health Care Power of Attorney or Durable Power of Attorney moved away years ago. Perhaps your most trusted advisor, who knows your medical/financial wishes, is now better suited to one or both tasks.

We all change. Our estate plans should change with us.

Call your FOS estate planning attorney and review your estate plan.

FOS’s ESTATE PLANNING ATTORNEYS



FOS shareholder
Allan T. Young

A Certified Public Accountant (CPA), Al worked at the Big 8 Arthur Andersen accounting firm before joining FOS.

Al is a member of the Greater Milwaukee Foundation’s Herbert J. Mueller Society.

He is a past Chair of the Wisconsin Bar Association’s Taxation Section.

Al is a former Chair of the Milwaukee Bar Association’s Taxation Section.

Al is a member of WICPA’s State Tax Committee and the Waukesha County Estate Planning Council.



FOS shareholder
Gregory J. Ricci

Greg worked at the Big 8 Arthur Andersen accounting firm before joining FOS. He is a CPA.

Greg served on the Board of the Wisconsin Bar Association’s Taxation Section.

He also served on the American Bar Association’s Fiduciary Income Tax Committee.

Greg is a member of the Greater Milwaukee Foundation’s Herbert J. Mueller Society.

He is also a member of the Milwaukee Estate Planning Forum.



ENGAGED? PUT AN ESTATE PLAN ON YOUR REGISTRY

After the rice is thrown and you return from your honeymoon, give yourselves a real gift.

Create an estate plan.

You may need a Marital Agreement. Wisconsin, after all, is a marital property state.

Spouses are presumed to share equally in most assets, including earnings, acquired by either spouse after the marriage. If an asset brought to the marriage by one spouse is mixed with individual assets of the other spouse, as in a joint savings account, it or its earnings can become marital property.

If you don't want that to happen, a Marital Agreement may be for you.

So is a will or trust, under which you designate to whom and under what circumstances your assets will be distributed if you unexpectedly die.

You may want your prized baseball collection to go to your college roommate. Your spouse may want her "Buffy the Vampire" collection to go to her sister.

And, if you have children, you can designate who should raise them - not who your families want to raise them - if you both die.

In addition to a will or trust, powers of attorney are a must.

In a Health Care Power of Attorney, you designate who (presumably but not always your spouse) will make medical decisions for you if you are incapacitated.

You make a similar designation, but for a trusted financial advisor, in a Durable Power of Attorney, which involves the management of your assets and the payment of your bills.

Further, you and your spouse must designate the beneficiaries of your life insurance and retirement accounts. These designations are customarily made in conjunction with overall estate planning documents.

Once your estate planning is complete, celebrate your good romantic fortune. The gift you have given yourselves, with periodic review and appropriate modification, will be the most valuable of them all.

Blended Families, cont. from page 1

example is a Marital Agreement which confirms that each spouse's assets are that spouse's individual property, and the spouses' continued separation of their respective assets. The spouses can still periodically gift funds to each other under the unlimited marital deduction.

As for No. (3)'s wayward daughter, her access to inherited funds can be limited to a minimum age of receipt, a particular amount, an annual (or other period) maximum, and/or a particular purpose (health, education, through a trust).

Time changes, and so do families. Enjoy yours, and be confident about your financial future.

**<http://www.stepfamily.org/stepfamily-statistics.html>*

Divorce, cont. from p 2

The "Dead Man's Statute," which barred evidence of conversations with a deceased person, was recently repealed.

Testimony as to conversations with a deceased individual may be admissible on the issue of "intent" - without the deceased's ability to tell his or her own story. What a mess.

Another mess could happen if, under the law, a will's or trust's primary beneficiary is "erased" by a divorce. This automatic change could upset the document's overall dispositional scheme, especially if the document contains no backup provision.

The same is true for powers of attorney. In Wisconsin, upon the completion of a divorce, a Health Care Power of Attorney naming a former spouse as agent is automatically deemed revoked and invalid. Unless a durable (financial) power of attorney provides otherwise, an agent's authority under that document ends when a divorce action is filed. So, if you become incapacitated, you could be left with no designated person to make your financial or health decisions.

Maybe worse still, a bank or hospital, not knowing of the divorce, could rely on your ex's "authority" to handle your money or make medical decisions for you.

Protect yourself. Re-do estate planning documents upon a divorce.

**<https://www.divorcemag.com/articles/us-divorce-statistics-and-divorce-rate-2000-2017>*



622 N. Water Street
Suite 500
Milwaukee, WI 53202
Phone: 414-273-3939
Fax: 414-273-3947
www.foslaw.com

Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you do not want to receive future newsletters from Fox, O'Neill & Shannon, S.C. please send an email to info@foslaw.com or call us at (414) 273-3939.

Postage

Address label

IN THIS ISSUE

Page 1 Blended Families/
Changes

Page 2 Divorce

Page 3 Engaged?

Page 4 Estate Tax

This newsletter is for information purposes only and is not intended to be a comprehensive summary of matters covered. It does not constitute legal advice or opinions, and does not create or offer to create any attorney/client relationship. The information contained herein should not be acted upon except upon consultation with and the advice of professional counsel. Due to the rapidly changing nature of law, we make no warranty or guarantee concerning the content's accuracy or completeness.

NO ESTATE TAX FOR ME! WHY DO I NEED AN ESTATE PLAN?

Under the current tax law, an individual can leave \$11.4 million to his or her heirs in 2019 without paying any estate or gift tax.

Eleven million dollars!

Well, you think, that takes care of my estate planning obligations. Let's toss that will in the trash. Or, let's save some money; cancel that appointment with our attorney.

Please, don't. Taxes are only one part of estate planning.

Another part, for most of us the important part, is about autonomy—we want to determine where and to whom our

assets will go, even if we won't be here to see that happen.

And we want to choose who will make financial and medical decisions for us, while we're still living, if we can't make them for ourselves.

That's estate planning. Your directions. On your terms.

Don't want the family fighting over your children if you and your spouse die? Name a guardian in your will.

Want to prevent your son from spending his inheritance while he "finds himself?" Have your trust limit the timing, amount

and purpose(s) of his distribution.

Want to help your stepdaughter pay off college loans if they remain outstanding at your death? Put it in your will or trust.

Want to leave funds to your college alma mater? Do so in your will or trust.

Is your husband a financial mess? Name a trusted, financially knowledgeable person as your agent in a durable power of attorney.

Does your next of kin live far away? Name a trusted person, who knows your medical

wishes, to make medical decisions for you, if you are incapacitated, in a health care power of attorney.

Want to avoid making your grieving loved ones start from scratch, to find and transfer your assets after you're gone? Have an estate plan.

Want to avoid having your bequests made public (and the inventory and other probate fees which come with court proceedings)? Have an estate which avoids probate.

These are just a few examples.

Taxes or no taxes, everyone should have an estate plan.