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*A Registered Investment Advisor

Estate Planning for a Second Mortgage

They say that love is lovelier the second time around. But for many individuals, remarriage later in life can create some unique estate planning issues.

If you're anything like the typical person contemplating a second (or third) marriage, you're older, you have children, you've accumulated property, and you've been enjoying a standard of living you would like to maintain. Entering into a new marriage can raise many, perhaps conflicting, concerns such as:

- How can you protect assets you already own?
- How can you provide for children from a previous marriage?
- How do you share assets acquired or inherited after the marriage equally or fairly?
- How do you ensure your prospective spouse's future financial security?
- How can you avoid family disharmony?

How should you address these concerns?

Put your financial cards on the table Money is a major cause of stress in any marriage, but it can be especially so in a second one. You and your future spouse should discuss and agree on all important financial issues, and formulate plans that, hopefully, everyone can live with. Full disclosure is important, especially if you intend to...

Protect your assets with a prenuptial or postnuptial agreement

You're probably well aware that life is not a stroll down the primrose path, so while the suggestion of a prenup or postnup may not fan the flames of romance, you should know that this contract is important if you're bringing assets into the marriage. Why? By law, a surviving spouse has the right to take an "elective share" of the deceased spouse's estate, regardless of what is in the

will. An elective share is typically one-third or one-half of the estate. An elective estate can include almost all the decedent's property, even property with beneficiary designations and property held in trust. If your surviving spouse takes his or her elective share, this may result in the unintentional disinheritance of your children or other heirs.

The only way to supersede elective share laws is with a prenup or postnup, in which both parties can waive their rights to the elective share. This way, you can minimize the chance that state law will interfere with your intended estate plans.

Revise your will and other estate planning documents

Remarriage does not revoke a will (although state law can trump a will, as we have just discussed). It is vital, therefore, that you draft a new will in light of your new circumstances. While you're at it, review and update other estate planning documents, such as your durable power of attorney, health-care directives (e.g., living will, health-care proxy), trusts, and beneficiary designations (for life insurance and retirement plans, for example).

Providing for your children from a previous marriage

A big concern in many second marriages is providing for the new spouse without disenfranchising children from a prior marriage. Having your assets pass into a "QTIP" trust can be part of the solution. With a QTIP, all trust income is used to support the surviving spouse while the principal is preserved for the children. And there's a bonus: assets passing to a valid QTIP qualify for the marital deduction, helping to minimize potential estate taxes at your death.

Dealing with wealth disparity

In second marriages, it's not uncommon for one spouse to be wealthier than the other. If estate taxes are a concern, equalizing your estates to take advantage of both spouses' exemptions (\$3.5 million in 2009, subject to change thereafter) may be in order. Without equalization, you may lose valuable tax savings if the less wealthy spouse dies first.

Apportioning estate taxes

If both spouses have children from a previous marriage, you may want to plan for the payment of estate taxes in such a way that each child will bear the burden equally.

Conclusion

Each couple entering into a second marriage has unique concerns and goals. It's important to deal with your issues squarely, and create a plan that will optimize dispositions, minimize taxes, and avoid unintended results, family disharmony, or even litigation.

For more information, please contact Scott Cote, Director of Practice Growth at (214) 461-1467 or via email at scote@lgt-cpa.com.

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