



ESTATE PLANNING FUNDAMENTALS

Planning for your modern family?

Three special planning considerations for today's families

"Family" is a powerful word, loaded with meanings and emotions. And today, family structures go far beyond historical legal and cultural definitions. For any of today's families, the essential planning questions of yesterday still apply. For example: To whom do I want my wealth to go? When should money be given and in what form? These are not easy questions and they can get more complicated when the family model differs from those in the past. In general, the special planning considerations for families that differ from "traditional" families fall into three main categories.

1) Essential planning documents

Certain planning documents are essential for all families, but the need may be greater for some modern families.

- **Will.** Anyone without a will is generally subject to his or her state's laws on disposition of assets—if you don't provide otherwise, the law is going to presume, and dictate, who receives your assets at death. As a result, your assets could go to family members with whom you were not close rather than to your close family and friends and/or your favorite local charity.
- **Health care documents.** If you are unmarried or do not have children, you could face a greater need to formally appoint an agent to make health care decisions for you. Without a natural "next of kin" or an appointed agent to make decisions for you, your health care wishes may be unknown or unfulfilled.

2) Taxes and finances under one roof

While a couple may define themselves as being in a relationship, they will be "single" in the eyes of the IRS if they are not married and different rules may apply to them than apply to their married counterparts. Examples of tax rules that differ for married couples and unmarried couples include the following:

- **Gifts.** When a couple is married, they can generally transfer assets to each other without any gift tax consequences. However, for an unmarried couple, a financial benefit received by one partner from the other could be considered a gift and there could be tax consequences depending on the circumstances.
- **Estate taxes.** Under the current estate tax law, spouses can take advantage of the marital deduction and effectively share their estate tax exemptions through portability. On the other hand, there is no marital deduction or portability for unmarried partners.
- **Retirement account inheritance.** If the beneficiary of a retirement account is the surviving spouse, then the spouse can stretch the distributions from that retirement account over his or her own life expectancy. However, the law now requires most non-spouse beneficiaries of retirement accounts to withdraw the assets from the account within 10 years following the death of the account owner (if the account owner died after December 31, 2019).
- **Property titling and income taxes.** How an unmarried couple titles a home can affect income taxes. For example, who holds title to the property can determine who can deduct property taxes and any mortgage interest. By contrast, for a married couple, those items could be deducted on a joint income tax return regardless of how title is held between the two of them.

3) Relationships: Legalities and realities

While the makeup of families has been changing over the years, the law has not always kept pace with science or the needs of modern families. Advances in assisted reproductive technology (ART) have raised significant questions of property, family and personhood. Further, while adoption and blended families have been around longer than ART, estate planning documents have not always reflected these dynamics. It's important to have a frank discussion with your team of advisors about your intent for your family because the related legal and estate planning issues can play out over many generations. Examples of the issues to consider include:

- **Defining parentage.** The laws of your state may not address the definition of “parents” or may address it in a way that is different than you intend, so it is important to understand how ART may impact your rights and those of your family.
- **Control of genetic material.** States have also interpreted rights to genetic material differently. If you have stored genetic material, it is important to specifically provide for that genetic material in your documents. It is also important to review and understand any contracts or other documents that govern your rights to genetic material in the event of divorce or death.
- **Defining descendants.** Without clarifying language, “descendants” can be restricted to the biological definition, potentially ruling out cherished family members because they do not share your blood. This can be avoided by specifically defining “descendants” in your documents to reflect your wishes.

It's helpful for all families—regardless of how the family is currently defined or configured—to understand the special planning considerations that may apply them. It is also helpful to incorporate flexibility into estate planning to account for changes in tax laws and changing family structures, especially when planning for multiple generations. **For more information on planning for your modern family, visit our *Estate Planning Fundamentals* resource page.**