Estate planning for blended families

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Managing estate planning for blended families can often pose significant challenges. If you have experienced a family breakdown and have re-partnered, and you have children from a previous relationship and/or children/stepchildren with your current partner, this can create obvious conflicts as each family member could have a competing interest in your estate and how you have chosen to distribute it in your Will.

This blog looks at the challenges in estate planning for blended families and how these challenges may be overcome.

Will all my assets form part of my estate?

When looking to get your estate planning sorted, it is crucial to have an understanding of the assets that will form part of your estate for distribution to your beneficiaries nominated in your Will.

Only those assets which form part of your estate will be distributed in accordance with the terms of your Will (ie. to your beneficiaries).

The following assets do **not** form part of your estate when you die:

1. **Jointly owned property** – assets you own jointly with another person, most commonly your spouse, automatically pass to the surviving joint owner when you die and are not distributed in accordance with your Will. Further, in Victoria, jointly owned property is not available to a claimant who makes a Family Provision Claim against the deceased owner's estate. These claims are explained in more detail below.

2. **Superannuation and life insurance proceeds** – superannuation death benefits often represent a large portion of a person's overall wealth. They do not automatically form part of a deceased person's estate. In the absence of a binding death benefit nomination (which you complete via your super fund), the trustee of the superannuation fund will determine who receives the death benefit.

   Superannuation death benefits can only be paid to one or more of the deceased person's dependants or to their legal personal representative (i.e. their estate which, where there is a Will, is managed by the executor). You can read more about how superannuation is dealt with after death, in our article 'Superannuation and your Will'.

3. **Assets held in a family trust** – assets held in a discretionary family trust are owned by the trust and do not form part of a deceased person's estate. The assets are dealt with in accordance with the terms of the trust deed.

It is particularly important to understand what assets do and do not form part of your estate if you have a blended family so that you can potentially address the competing needs of each family member.

Further, at the time of designing your estate plan, it is important to address any possible claims for contesting the Will. At this time, you can potentially limit assets that are distributed in accordance with your Will.

Is my estate at risk of a Family Provision Claim?

Tensions often occur when a person dies, leaving a spouse and children of a previous relationship (and possibly children of the existing relationship), at the time of their death.

A person who has a blended family can expose their estate to the risk of a claim where they die leaving their entire estate or a significant portion of their estate, to one or some family members, to the exclusion of another or other family members. The excluded family member(s) can make what is known as a Family Provision Claim ('**FPC**') against that person's deceased estate.

The most common circumstances where FPC's are made are where:

1. children of a previous relationship are excluded from a Will (or do not receive enough provision) and the estate, or a significant share of the estate, is left to a second spouse or partner;
2. children of a previous relationship receive the entire estate (or a significant share of the estate) and the surviving spouse or partner receives nothing or not enough; and
3. children of a second relationship are provided for in a Will (i.e. where the other parent has died), but no provision or not enough provision is made for the children of a previous relationship.

In all the above scenarios, the excluded family member(s) are eligible to make a FPC against your estate if you die and they are not provided for, or not adequately provided for, in your Will.

What are the options for blended families?

If you have a blended family and want to avoid a claim against your estate, addressing and balancing the interests of both your new spouse and your children from a previous relationship (or children from your second relationship if your spouse/the other parent has passed away), is important.

To balance the competing interests and minimise the risk of a FPC against your estate, you could consider the following options:

- Making adequate provision for all possible claimants, including a second spouse and children from a previous relationship. However, problems can be encountered where an estate is not large enough to make adequate provision for all family members and in this case, it can be difficult to find a balance between the competing claims.
- Creating a Life Fund in your Will, providing a benefit to your second spouse as opposed to an outright gift. This strategy is commonly used in respect of the family home.

  With this strategy, you can leave your share of the family home to your children, whilst allowing your surviving partner to remain living in the property until their death or other specified period.

  However, it is important that you make adequate provision for your spouse or partner as the 'principal dependant'. A life interest in your estate or the family home alone will often not be sufficient for this purpose. Further, a Life Fund may not be an option where the family home is jointly owned with your spouse, unless the manner of ownership is changed.
- Preparing a Mutual Will Agreement with your second spouse to ensure your children from a previous relationship are looked after.

  A Mutual Will Agreement is a contract entered into by two people, at the time they prepare their Wills together. It sets out the specific clauses of the Wills that the parties agree they will not alter after the death of one of the parties.

  A Mutual Will Agreement will assert some control over your long-term estate planning after your death, in so far as your partner will not be able to change their Will to exclude your children.

  However, whilst a party to the Mutual Will Agreement is prevented from changing their Will after the other party's death, it does not prevent your partner (or your children for that matter) from making a FPC against your estate if they consider adequate provision has not been made for them in your Mutual Will Agreement.

How a Wills and Estates lawyer can help

There can be issues when a member of a blended family dies. If you are part of a blended family and your spouse or parent has died, contact us to obtain advice about bringing a family provision claim, or alternatively about a family provision claim that has been brought against your loved ones estate.

Contacting Smith Family Law

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