

# Estate Planning Essentials: November 2017

*Chambliss Estate Planning Essentials brings you legal developments and other trends of vital interest in the world of estate planning. This post is brought to you by Rebecca Miller and other members of the [Estate Planning Practice Group](#) of Chambliss Law Firm.*

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## Section 1.01 Estate Planning Considerations for Remarrying

Getting remarried presents both joys and challenges. If you're saying "I do" for a second time, there are a few legal issues that you may want to consider.

### **Consider a Prenuptial Agreement**

Many people think that prenuptial agreements are only for the wealthy, but a prenuptial agreement can be important for people getting married for a second time, even if they don't have substantial assets.

A prenuptial agreement may provide for each party to keep their assets separate after the marriage, which could be important if the spouses want to preserve their premarital assets to pass on to children from a previous marriage. Some prenuptial agreements also address how financial issues will be handled during the marriage. Specifying who gets what in the event of death or divorce can reduce future conflict between the spouses or between a surviving spouse and a deceased spouse's other heirs.

In a second marriage situation, one or both spouses often wish to leave the majority of their estates to their children from previous marriages. State "elective share" laws can allow a spouse to claim his or her share of the estate even if the deceased's will does not designate the surviving spouse as a beneficiary. A prenuptial agreement can override the elective share laws and limit what a surviving spouse receives.

### **Make a Thoughtful Estate Plan**

With a second marriage, it is essential to make a thoughtful estate plan to ensure financial support for a blended family.

Even if someone has executed a prenuptial agreement limiting or waiving inheritance rights, he or she should carefully consider updating an existing will for the new spouse to arrange for sufficient financial support.

It is common in a second marriage for the primary residence to be titled in one spouse's name. So, it's important to give some thought to the survivor's living arrangements upon the death of the owner of the residence. One solution is to grant the survivor a right of occupancy which would be terminated after certain events, such as remarriage or relocation.

A person getting married for a second time may also need to consider obligations under a divorce decree from a previous marriage when formulating an estate plan.

### **Review Beneficiary Designations**

It is crucial to update the beneficiary designations on life insurance policies, 401(k)s, and IRAs because those designations take priority over a will. Often times, people forget to update their spouse's information after a new marriage. Also, a beneficiary other than a spouse can be named, but often only after the spouse expressly waives in writing his or her interest in retirement benefits.

### **Start a Conversation**

Before putting an estate plan in writing, we encourage clients to talk with their prospective spouse about their goals for providing for each other and for other members of their respective families. Although this conversation could be uncomfortable, clarity at the outset can make all the difference.

*The estate planning team at Chambliss is committed to helping clients update their plans as needs and living situations change. If you have questions about this or other areas of estate planning, please contact us.*