



## *SUMMER NEWS*

### **Value-Added Solutions for Blended Families**

In the past, the typical client was in a long-term marriage, with the client's only descendants being children of that marriage, and the children's descendants. "Blended families" are increasing in number, and they have their own unique set of challenges and problems. "Blended families" are families with multiple family groups. These families include married couples with one or both spouses having children by a prior marriage or relationship. These families also include clients with married children in which a child has a child by a prior marriage or relationship, or a child's spouse has a child by a prior marriage or relationship. These blended families create many complex estate and financial planning problems for our clients, including the potential disinheritance of their children and descendants, protection of the client's current spouse from the client's descendants, the protection of assets from former spouses, and disputes concerning the division of authority or responsibility between the different family groups. Therefore, estate planning for blended families is a form of asset protection.

There are several value-added solutions for blended families. Some clients will need premarital or marital agreements. The agreement should address the parties' rights and responsibilities during their marriage, including living arrangements, the division of the payment of expenses, and whether or not there is an obligation to purchase and maintain long-term care insurance. The agreement should also address the parties' rights and obligations if they divorce, the rights of the surviving spouse in the estate of the first spouse to die, and the obligations of the surviving spouse at his or her death.

With regard to descendants, a discretionary trust can be used. The trust can provide for discretionary principal and income distributions in equal or unequal amounts to the surviving spouse or the testator's children for appropriate purposes, taking into account the beneficiary's other resources, income and means of support. The client may want to consider giving the spouse an annual unitrust distribution, use a disinterested trustee to avoid conflicts of interest, and permit additional distributions for "any appropriate purpose." The residue of the trust is typically distributed to the client's children on the client's death. The client should also consider the inclusion of a "no contest" provision to minimize the risk of a challenge of the trust.

Another tool is a generation-skipping discretionary trust for the benefit of the grantor's child, and the child's descendants. **The trust is designed to protect the trust assets from the child's creditors, including former spouses, while maintaining maximum control for the child.** The trust typically provides that the child is the trustee of his or her trust unless he or she is involved in a divorce action or becomes a defendant in a lawsuit. Additionally, the trustee is given discretion to distribute income to or for the benefit of the child. As trustee, the child can distribute principal to or for the benefit of the child or the child's descendants in accordance with the health, education, maintenance and support standard, while a disinterested trustee can distribute principal for any appropriate purpose. The trust terminates on the child's death, and the remaining principal is paid to the child's descendants.

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