Richard S. Bernstein

Children Don't Have To Wait

Providing For Everyone in a Later Marriage

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Often a dilemma in **later marriages**, especially when there **is a significant age difference between spouses, is how to provide for the children from a prior marriage without triggering federal estate tax at the parent's passing**. Statistics show that women generally outlive their spouses and are typically the spouse in need of support at the first death. A typical estate plan for a married couple contemplates the use of both the available estate tax exemption and the marital deduction in order to defer estate tax until the death of the survivor. This plan, however, is difficult to reconcile with one's children's expectations that they will inherit when their parent dies. **There is a way to provide for the surviving spouse as well as the surviving children**.

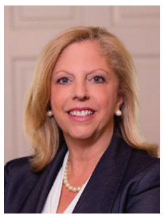
One option is to devise an amount equal to your remaining exemption to or for the benefit of your children. Under current law (pre any 2017 legislation which may change that) such amount is equal to $5,490,000 less any exemption used during life. If one's parent's assets are significantly higher than his or her remaining exemption or there are multiple children sharing in this devise, expectations can quickly turn to resentment and possible challenges of a parent's estate plan. Even with an increased exemption amount, disappointment will quickly become the feeling of the day. This disappointment will not only affect the children. To the extent the surviving spouse has fewer than expected assets to live out his or her days, a cloud of resentment will hover over any interaction between the children and surviving spouse, often causing family members to act like ungrateful and greedy inheritors.

Although there is no perfect solution to this age old dynamic, there is one that comes pretty close; that is insurance.

A parent (assuming he or she is insurable or has a significant permanent insurance policy already) **can establish an irrevocable insurance trust** by either opening a life insurance policy in the trust or transferring an existing policy into the trust.

If an existing policy is used, it will either be transferred as a gift or sold to the new trust. The parent will need to have sufficient cash flow to pay premiums on the policy held in trust but such payments also reduce the ultimate taxable estate when he or she dies.

Insurance held in an irrevocable trust will not be subject to estate tax as long as the parent does not retain any incidents of ownership. Premium payments are leveraged into a non-taxable death benefit which can be held in trust for a child or children, protected from their creditors (including a divorcing spouse). One or more trusts for the surviving spouse can provide for him or her as sole lifetime beneficiary of the parent's estate without the payment of the estate taxes (children will get a second bite at the apple when surviving spouse passes, inheriting the remainder of these trusts). Lastly, to the extent the children want certain assets which belonged to the parent, the insurance trust can purchase those assets from the parent's estate and hold them for the use and benefit of the children. Since types of insurance and the terms of trust are varied, you should consult with your insurance and tax and estate planning advisors before engaging in any of the above planning.



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