

The Casserole Brigade

The tale is a familiar one. A husband loses his wife. After the funeral, the casseroles start arriving, first from neighbors, then even from friends of neighbors. Not long after, the husband marries one of those casseroles. Well, not the casserole of course, but the woman behind the casserole. While the children cringe, the husband embarks on this surprising new phase of his life. It's surprising, of course, only to the husband; even the children see right through the façade crafted by the relatively young woman, who is often about the same age as the eldest son or daughter.

The children are in a difficult situation, not wanting to convey too brazenly to their father what they see as obvious, but not wanting him to be deluded either. Before long, the husband's sizable retirement plans have had their beneficiary designations changed, the life insurance policies have a new beneficiary, and the children will be lucky to see even a small portion of their anticipated inheritance. Worse yet, sometimes they have to wait until the death of the younger wife before receiving anything.

Could the deceased wife have done anything to prevent the disinheritance of their children? Of course, but only if she and her husband planned ahead. There are several answers to this problem, and different clients are likely to choose different paths to ensure that their children are not overlooked.

One answer is to avoid engaging in simplistic estate planning, such as a basic will that leaves everything to your spouse. What can go wrong by doing that? First, you may set up your spouse and your children for a needless estate tax liability. More to the point, by leaving everything to your spouse, you forfeit any control you exercise over your share of the joint assets after your death. You are placing all control in the hands of your husband and presuming that everything will work out fine. The alternative is to make arrangements such that after your death, your wishes for who is to receive your share of the assets must be carried out.

When done correctly through a trust, for example, you can arrange for a percentage of your share of the assets to pass directly to your children after your death or after your spouse dies, rather than having your share of the assets pass to your spouse, then to the other woman. Trusts are incredibly flexible when it comes to determining how much access, if any, you want your surviving spouse to have to the funds allocated to your children, and when you want your children to receive the funds.

Another way that things go awry is lack of organization. You should be sure that all of your assets, including retirement accounts, are coordinated in a comprehensive plan. When you fail to plan ahead, too often people you would not have chosen end up with the assets. It's important to think about IRAs, 401(k)s and the like in coordinating your plan, because these assets are subject to different rules than regular financial accounts. And financial accounts of all types are usually treated differently than probate assets.

What this all boils down to is identifying your biggest concerns, and ideally discussing them with an estate planning attorney. In fact, there are two questions that I often ask new clients to begin the discussion: why are you here, and what keeps you up at night? This is similar to a doctor asking what happened and where does it hurt. Without an open understanding of where concerns exist, it's difficult to craft a plan that addresses those concerns fully.

And whatever your concerns are, don't be hesitant to voice them. An experienced estate planning attorney has heard most of them in one form or another, because clients, no matter how unique, share many of the same fears. As well as the same hopes for their children.

Adam Bartsch, *The Casserole Brigade*, The Shelburne News, July 3, 2008.

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