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WEALTH MANAGEMENT



Planning for a blended family

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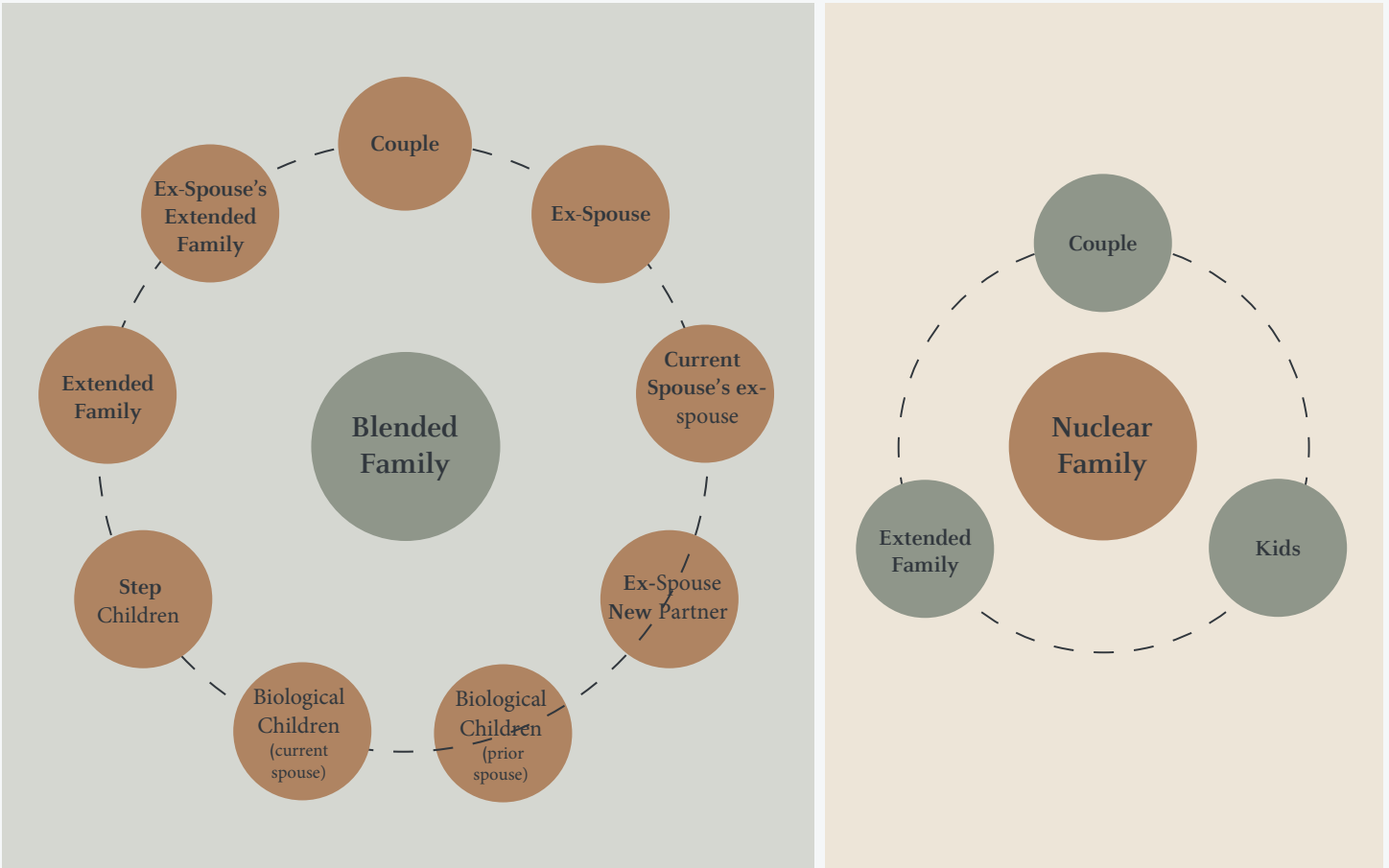
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The term “blended family” can have different meanings for different people. According to the dictionary, a blended family is “a family that consists of two adults, the child or children that they have had together, and one or more children that they have had with previous partners.”¹ That definition doesn’t fully capture the kaleidoscope of ex-spouses, ex-in laws, unmarried parents who may have split up, children who may live in multiple homes with different parents depending on the day or week, and all the emotions that come along with so many stakeholders.

¹ <https://dictionary.cambridge.org/us/dictionary/english/blended-family>



Blended families are becoming more and more common. According to a Pew Research Center 2015 report, in 1960, at the height of the Baby Boom, 73% of children were living in a family with two married parents in their first marriage.² By 1980, 61% of children were living in this typical nuclear family, and by 2015 fewer than half were.³ Even though 62% of children in 2015 were living with two married parents (an all-time low), 15% were living with parents who had remarried and 7% were living with parents who were cohabiting without being married.⁴

Planning for your finances and estate in the context of all the different ways families blend together can feel overwhelming.⁵ There are some thoughtful things you can do before you even contemplate being part of a blended family. Most planning, though, will be done after you meet a new partner, and especially after you and your new partner have a child or children together.

² <https://www.pewresearch.org/social-trends/2015/12/17/1-the-american-family-today/>

³ Id.

⁴ Id.

⁵ In this white paper we discuss planning for blended families. The Pew study also found that 26% of children were living with a single parent, and we'll discuss planning for single people and unmarried couples in a different white paper.



Before you're part of a blended family

Before you are part of a blended family you are probably—although not necessarily—part of a traditional nuclear family.

If your marriage is heading for divorce, there are a few things you can do to help make things easier for your potential future blended family.

- Try to make sure that your financial lives end up as separate as possible.
 - » This may not always be possible, either because your ex-spouse will end up with an interest in your retirement account(s) or because you have other financial obligations to him or her, or to your children.
 - » If possible, try to minimize those future obligations (for example, having an obligation to maintain a life insurance policy that benefits your ex-spouse or maintain your ex-spouse as a beneficiary on your retirement accounts).
- If you create estate planning documents, it might be appropriate that your spouse can only act as a fiduciary as long as you're still married. Consider removing your spouse as a trustee or other fiduciary if your marriage ends in divorce.
- Once a divorce is final, work with your estate planning attorney to remove your spouse from your documents. Unless your divorce agreement or court order requires otherwise, you should consider removing your ex-spouse as a decisionmaker (for example, from financial powers of attorney or health care powers of attorney), as a fiduciary (from trusts or under your will), and as a beneficiary (in your will, in your revocable trust, for life insurance, retirement plans, pay-on-death or transfer-on-death accounts, etc.).

Once you meet someone with whom you would contemplate starting a new family, there are other things you can and should do to ensure that your wishes survive the ups and downs of modern life. Although many people are reluctant to plan for the dissolution of a marriage near the beginning of that marriage, if you do end up as one of the 50% of married couples who divorce, having planned in advance can save time, money and heartache.⁶ See our **WealthFocus** on planning for divorce for some ideas about how you can hope for the best while planning for the worst.

⁶ While roughly 50% of first marriages end in divorce, the failure rate for subsequent marriages is even higher: 67% for second marriages and 73% for third marriages. See Revealing Divorce Statistics in 2023, <https://www.forbes.com/advisor/legal/divorce/divorce-statistics/>, updated May 4, 2023, accessed July 7, 2023.

Sign a pre-nuptial or post-nuptial agreement early

Communication is crucial in any marriage, so start early. Discuss your financial goals and how you think about your assets, then put those objectives into a written agreement. This can help reduce conflict and misunderstandings later. You and your spouse should have independent legal counsel for any pre- or post-nuptial agreements.

A prenuptial agreement is an agreement between you and your future spouse that you enter into **before** you get married. A prenuptial agreement generally describes how you want your assets to be

divided in the event of divorce or death. It can be as comprehensive as you like.

If your family owns a business or your parents have left or expect to leave you an inheritance—from a tangible item with sentimental value to many millions of dollars—your prenuptial agreement can maximize the likelihood that your spouse will have no claim on that asset. You can specify different distribution outcomes depending on the length of the marriage and whether you have children with this spouse.





Note that the form in which you hold property can sometimes trump even a well drafted prenuptial or postnuptial agreement. For example, if you keep an inheritance or other separate property in a separate account, your marital agreement should control its distribution in the event of divorce or death.

However, if you put your separate property in a joint account, some states are likely to treat it as marital property even if a marital agreement says something different.

Some spouses may enter a marriage with debt rather than with assets. In that case, a prenuptial agreement can shelter the other spouse from being responsible for that debt.

A prenuptial agreement requires full financial disclosure from both of you.

If you're already married, it's not too late—you can still create what's known as a "post-nuptial" agreement, which is an agreement between spouses about how their property will be divided in the event of divorce or at death.

In general a postnuptial agreement has the same requirements as a prenuptial agreement—both spouses have to disclose all finances and should have independent representation. And a postnuptial agreement can cover the same areas as a prenup—distribution of assets and liabilities, responsibilities to each other post-divorce, and so forth.

Maintaining open lines of communication will help you and your partner face future challenges together. Review our [WealthFocus](#) on preparing your finances for marriage for more information on the planning considerations to discuss with your spouse.

Ensure estate planning documents meet objectives

40% of new marriages include at least one partner who has been married before.⁷ It is a good idea to create or update your estate plan when you go through a major life event like creating a blended family. If you have no estate plan, your assets will be distributed according to state law; if you don't update an existing estate plan, your assets will be distributed according to your outdated plan. In either of these scenarios, your assets may not be distributed according to your current wishes.

Even if you do have a plan, especially in the context of a blended family, you need to be explicit when stating your wishes.

For instance, if you do not have a will or trust indicating otherwise, state laws generally give a portion of your assets to your spouse and the balance to your children when they reach the age of majority—but only to your biological children, not to your step-children, no matter how young they were when you married their biological parent.

And even if you **do** have estate planning documents, you have to carefully describe what you want. If you just leave your assets to your “children” or your “descendants”, unless you specify otherwise those terms don't include stepchildren or anyone other than blood relatives. Your estate planning attorney can help ensure that your documents accurately reflect your current wishes.



⁷ Id.

Check asset titling and beneficiary designations

The way you title your assets can often upend even the most carefully drafted will or trust. For instance, property held with a spouse as joint tenants with rights of survivorship—a common way for spouses to own property jointly—passes automatically to the other joint account owner upon your death. This can include bank accounts, brokerage and other financial accounts, as well as your home or other property.

For example, while you may have planned in your will or revocable trust for some of your property to pass to children from a prior marriage, if all your assets are owned jointly with rights of survivorship with your spouse, your plan as expressed in your will or revocable trust will not be carried out, since all of your assets would pass to your spouse according to the asset titling.

This is also true for “payable on death” or “transfer on death” accounts, where you may have named someone to inherit a particular account or asset on your death. Once again, this titling may not be consistent with your thoughtfully crafted plan as expressed in your estate planning documents.

You should always make sure that the way you own your assets is consistent with your estate and wealth plan. If you want to leave assets to children or other members of your former family, you should consider retitling those accounts or assets into your individual name. If it’s important to have a joint account with your spouse, you can hold assets with your spouse as joint tenants in common. At the death of one joint owner of a tenant in common account, that owner’s half of the account will be controlled by his or her will and can be used to fulfill your plan.





If you live in a community property state, you should speak with your estate planning attorney and wealth advisors about ensuring you specifically identify your separate property before you contribute it to a joint revocable trust with your spouse (and your spouse should do the same). Your trust will control the disposition of all of your separate property but only half of your community property; the other half automatically belongs to your spouse when you die. And if you have a community property with rights of survivorship account, the same considerations as above apply.

In addition to checking your asset titling, you should be sure to review and update your beneficiary designations for your IRAs, 401(k)s, existing life

insurance policies, and other accounts where there is a direct beneficiary named, including any employee benefits such as deferred compensation and stock or option plans. Beneficiary designations are often overlooked, and some people accidentally don't remove ex-spouses as a beneficiary. Note that a divorce decree does not override a beneficiary designation—if the decree is silent about a particular account, the designation associated with that account will control its disposition if you die.

In other circumstances, you may have named a child as a beneficiary of one or more accounts or policies—even if that doesn't reflect your current intent.

Blending families is difficult; don't let these common mistakes trip you up.

Consider life insurance

If you are planning to leave a family business or other asset to older children from a first marriage, life insurance could be a helpful way to provide for your new spouse and younger children (or vice versa).

A new spouse or children add more complexity to your estate planning, but one simple question can help you approach your plans: Do you want your children from a previous marriage to wait until their step-parent passes away to receive certain assets, such as life insurance money? From an emotional perspective, providing this liquidity to your older children could help to relieve some conflict that may build up as a result of having to wait for other parts

of their inheritance until their step-parent's death. This is especially important if your new spouse is significantly younger than you.

Life insurance can also be a way to provide for younger children from a subsequent marriage while also transferring wealth to older children from an earlier marriage. Especially if your younger children have yet to attend college or graduate school, or are not yet out of the house, insurance can be an easy and efficient way to provide liquidity to pay the expenses you paid for your older children and would have paid for your younger children.



Update your health care and power of attorney documents

Review and update your health care and any special or durable power of attorney documents to reflect who you want to be your agent and power-holder. You may still have a former spouse named in those documents. Alternatively, you may have named your children prior to your re-marriage and now you want your spouse to act on your behalf. You should work with an attorney to update these documents if the current documents are not in line with your current wishes. Often in the context of a blended family, individuals have a “committee” of agents that could be composed of your new spouse and children. Note that many states prefer, and some require, that only one person at a time may act as a health care agent.

Having members of different families with potentially competing interests makes it even more important that you set out your end-of-life wishes in a Living Will. These instructions should be clear and should leave no room for doubt about your wishes.

Clear communication—about your health care wishes and about everything—will make it more likely that your wishes are carried out after your death.



Portability of the estate tax exemption

Each person is able to shelter up to \$12,920,000 (in 2023) from federal gift or estate tax during their lifetime, which is referred to as the lifetime exemption amount. Any exemption that remains unused at death is available to shield assets from estate tax. Any unused exemption is portable to a surviving spouse, meaning it is added to the surviving spouse's remaining exemption. If portability is utilized properly, a married couple has a total of \$25,840,000 (in 2023) of available exemption during their joint lifetimes. This brings up two primary issues with respect to second marriages: conflicts of interest the last deceased spouse rule.

CONFLICT OF INTEREST

Portability has to be elected by the executor or personal representative of the estate of the deceased. Often a spouse is named as the executor or personal representative. If a second or subsequent spouse is appointed by the relevant court as the executor or personal representative, he or she may want to elect portability to ensure he or she inherits the deceased spouse's unused exemption. However, that election can limit the amount children from a prior marriage receive or it could cause bequests to those children to be subject to additional estate tax.

Addressing the portability election with your estate planning attorney and in a marital agreement can be an effective way of dealing with this issue ahead of time.





LAST DECEASED SPOUSE RULE

A spouse can only use the unused exemption of his or her “last deceased spouse”.⁸ Once the last deceased spouse’s unused exemption is used by the surviving spouse, however, he or she can then inherit the unused exemption of a subsequent spouse.

This brings up two sub-issues. In order to use the deceased spouse’s unused exemption, the surviving spouse can make lifetime gifts. If the survivor uses up all of the first deceased spouse’s unused exemption after it is ported to him or her, he or she can then inherit and use a subsequent spouse’s unused exemption (assuming the portability election is made correctly). The surviving spouse needs to have funds to make that gift, however.

If the survivor inherited more unused exemption than the subsequent spouse

has available and the survivor doesn’t have enough assets to make lifetime gifts to use the first spouse’s unused exemption, consider a marital agreement that could require the subsequent spouse to allow the survivor to elect portability if he or she survives again. If the subsequent spouse has less unused exemption than the first spouse, consider whether the surviving spouse should be compensated in some way. Life insurance could be something to consider in this situation as well.

Example: John dies and leaves Mary with \$3 million of unused exemption. Mary subsequently marries Bob, who only has \$1 million of unused exemption available. If Bob dies before Mary uses up John’s \$3 million unused exemption, she will lose the ability to use John’s exemption and will be limited to Bob’s \$1 million.

⁸ Internal Revenue Code §2010(c)(4)(B)

Introduce trusted advisors to your new spouse/adult children

You and your new spouse may have separate advisors for tax, legal and investment matters. Consider introducing each other to your respective advisors so that each of you is familiar with the individuals and institutions that may be able to assist in the future when needed. Adult children should also be brought into the conversation and introduced to your advisors.

Communication among all interested parties about your wishes is the best way to increase the likelihood that your wishes are carried out. If your family—with all of its permutations—doesn't know what you want, it's easier for disagreements to arise after you're no longer available to settle a dispute.

Family meetings can be a helpful way for you to determine whether and where potential conflicts among your spouse, children and step-children may exist. Family meetings are also a forum for you to express your desires regarding your estate plan. Hearing your goals in your own voice may help alleviate future misunderstandings about your wishes among your family members.

Dynamics, estate size and circumstances are unique to each family. It is essential that you consult with your attorney to determine which planning options are best for you. You can also consider engaging with an expert in family dynamics. Proactive planning and discussions during your lifetime can be very beneficial for your blended family.

Please contact your J.P. Morgan representative to discuss these and other considerations as your family composition and goals evolve.



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