



ESTATE PLANNING FOR SECOND MARRIAGES

Key Considerations + 10 Important Questions to Ask Yourself



MILLER
ESTATE AND ELDER LAW

256-472-1900 • bill@millerestateandelderlaw.com



FIRST, A CAUTIONARY TALE...

John and Jane* were happily married for more than 20 years, living on a farm with their two children when Jane passed away in a tragic accident. The couple had an estate plan in place, and all of Jane's assets—and everything the couple owned jointly—was transferred into John's name.

Years later, after his children were grown, John remarried. However, he didn't plan very well for what would happen to his assets—many of which he had inherited from his first wife—after he passed away.

To make a long story short, when John died, all of his and his late wife's assets, including the farm that they raised their children on, were transferred to his second wife. Perhaps if his second wife was a good and honest woman, she would have bequeathed the family farm to his children anyway, recognizing and honoring the deep emotional connection they had with the property.

Unfortunately, that didn't happen. His second wife sold the farm, pocketed the cash, and left his children without anything but their memories.

Don't be like John. When you decide to remarry, there are important considerations to take and questions to ask yourself about how you would like your assets distributed between your family and loved ones, and your new spouse's family and loved ones.

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NOW, THE GOOD NEWS

Nearly 80 percent of previously married people will choose to get remarried, and for good reason! Of course, finding true love is the leading reason, but tax benefits, better finances, and lower poverty rates are also at the top of the list of reasons to get remarried. Some studies have even linked marriage with better physical health!

Getting remarried opens the door to new and wonderful opportunities. You'll get the chance to spend the rest of your life with a partner who is perfect for you, and—if you have children from an earlier relationship, or plan to have children with your new spouse—you'll be able to grow and merge your families. **Just don't forget to plan!**



THE 5 BIGGEST MISTAKES TO AVOID

When it comes to estate planning for second (or third, or fourth...) marriages, we see people make these five mistakes all the time.

1. NOT UPDATING YOUR WILL

Your will outlines the exact way in which you want your assets to be distributed, names a guardian for your minor children, and also assigns the role of estate executor to someone you know and trust. Immediately after death or divorce—even before remarriage—you should update your will to reflect changes in these decisions based on your new circumstances. However, after getting remarried, you will need to make further updates to ensure your ex-spouse isn't still named as a beneficiary, and to outline which of your loved ones and heirs should receive which of your assets.

This isn't always straightforward. While it is common for remarried spouses to leave the entirety of their assets to their new spouse, and—upon their death—have their assets split evenly amongst the surviving children, this assumes that (a.) your spouse and children will all be getting along in the future, and (b.) that your surviving spouse won't write a new will that leaves your side of the family out of the will.

Furthermore, depending on which assets you owned prior to getting remarried, you may want those assets distributed to your children rather than your new spouse. For example, if you owned your home independently before your new spouse moved in, you may want it to pass down to your children and not your spouse. Along these same lines, important family heirlooms may be better served in the hands of biological family, and not in the possession of your new spouse or their children.

2. NOT CHANGING YOUR BENEFICIARY DESIGNATIONS

You would be shocked at how many times we've alerted a client that their ex-spouse was named as the designated beneficiary on their 401(k) or retirement account. It happens all the time, and—because accounts that use beneficiary designations bypass the probate process—there is no opportunity for your heirs to argue the validity of the designation.



Beneficiary designations allow certain assets to be transferred to a named individual immediately upon your death. The types of accounts that use beneficiary designations include:

- Bank accounts
- Retirement accounts: 401(k), 403(b), IRA, Roth IRA, SEP, SIMPLE, etc.
- Life insurance policies
- Annuity contracts
- 529 college savings plans

You should update the beneficiary designation on these accounts as soon as your marriage ends, and again after getting remarried. It's also worthwhile to check your beneficiary designations annually, to make sure you are still comfortable with the named beneficiary.

3. NOT UPDATING YOUR LEGAL DIRECTIVES

You may have named your ex-spouse as the agent on your healthcare directives or durable power of attorney, giving them the legal right to make medical, legal or financial decisions on your behalf in the event of incapacitation. Regardless of whether you lost your last spouse to death or divorce, you probably don't want them to be granted power of attorney in the event you become unable to make decisions for yourself. Especially if there is animosity between you and your ex, their best interests may be a lot different than yours—and if they assume the right to make medical and financial decisions on your behalf, your estate could be at a huge risk.

Make sure you update your durable power of attorney and healthcare directives to name a new agent: your new spouse, an adult child, a trusted loved one, or even a professional fiduciary.

4. DISTRIBUTING YOUR ASSETS EVENLY

You may be wondering what is wrong with distributing your assets evenly amongst the people you love. While this may be the most appropriate decision in some circumstances, it is often not the case when considering the unique needs of a blended family. Most spouses do not enter a marriage with an equal number of assets, thus you may want to distribute your assets unevenly between your spouse, your children, and their children.



The desire to distribute your assets unevenly may not just be an issue of what's fair or right, it may be an issue of what each of your beneficiaries needs. An adult child who is single with minimal income may need more than a married adult child with a high-paying job, living in a two income household.

Finally, if any of your beneficiaries is irresponsible with money—or has addiction issues—you may want to establish a trust to ensure their inheritance is distributed only under certain circumstances, for example, after a certain period of sobriety, or after specific life milestones have been met.

5. NOT WORKING WITH AN ATTORNEY

Chances are, if you are getting remarried, you have a more complicated estate than most. While online legal services or DIY estate planning tools may sound attractive, they are riddled with potential problems. The most common issues we've seen with DIY wills and trusts are:

- They are not legally binding or enforceable
- They are unclear
- The testator fails to list all of their assets
- The testator fails to consider “what ifs” or plan for contingencies

We've listed four major estate planning mistakes that people make when getting remarried, but this is far from an exhaustive list. Working with a qualified estate planning attorney will ensure you understand your options, ask yourself important questions, plan for every possible contingency, and—ultimately—pass down a legacy that is seamlessly aligned with your wishes, and your family's needs.

“ Through proper estate planning, you can avoid unintended consequences that prevent you from protecting your loved ones. ”



10 QUESTIONS TO ASK YOURSELF

If you are getting remarried, make sure you and your new spouse discuss the following 10 questions before meeting with an attorney to draft or update your estate plan.

1. Which assets will you leave to each of your children?
2. Are you planning on having additional children? If so, which assets will you preserve for them to inherit?
3. Which assets will remain yours, individually? Which assets will your new spouse continue to own independently?
4. Will you be retitling any assets into both of your names, for example, real estate property or bank accounts?
5. What debts are you and your new spouse bringing into the marriage? What debts will you create after you are married?
6. Which of you have wills that need to be updated?
7. Will you draft a new reciprocal will?
8. Besides a will, what other estate planning tools may be necessary: for example a trust, healthcare directive, or power of attorney?
9. Will you continue working with your current financial advisors, or choose a new advisor to help you manage your financial plan together?
10. Do you have sufficient life insurance coverage to provide for the surviving spouse and any children associated with your marriage?

CONTACT MILLER ESTATE & ELDER LAW

Everyone needs an estate plan. After meeting with clients, we help them prepare thoughtful, comprehensive estate plans. Our clients quickly learn that our goal is to provide them with strategies that protect them and their families.

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Call **(256) 472-1900** or visit **www.millerestateandelderlaw.com** to learn more.



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