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When you've seen one blended family—you've seen one blended family

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Many lawyers talk about 'blended families' as if they are all pretty much the same. Like, if you have seen one, you have seen them all. But that is not the case. There is the classic style of blended family where two persons (who may be widows/widowers and/or divorcees) come together bringing with them one or more children from their previous relationships.

Or it could be that only one person brings children from a previous relationship.

In either of the above situations, the couple may also end up having one or more children together—who may be significantly younger than the other children from their respective previous relationships.

It could be that the couple is similar in age, or it may be that there is a significant age difference between them (particularly in the case where the older person has children of a previous relationship, and the younger person does not). Sometimes, the younger spouse is also younger than the children of their partner.

Each of the above situations can be further complicated by issues such as:

- children being adopted, or not being adopted, particularly in a

'step' relationship

- a previous relationship having ended due to divorce rather than by the passing of the previous spouse
- the previous and/or current relationship being legal or de facto
- LGBTQIA relationships
- multiple de facto spouses and their respective children are involved
- one of more children having special needs
- animosity between children from different relationships of their parents/step-parents
- one partner having significantly more or less personal wealth than the other
- assets being held in structures such as family trusts and self-managed superannuation funds
- the state or territory in which the parties are domiciled
- the types and locations of the assets in the estate of the Will-maker (also referred to as a 'testator'), which will determine which laws of which state or territory will apply in the event of a challenge to the Will.

In each of the scenarios listed, the objectives and obligations of the person who is the Will-maker in relation to their spouse and the children of either and/or both of them may differ enormously. Issues that should be considered include:

- how close or otherwise the new spouse is to the children of the

Will-maker

- the length of any spousal relationship
- whether or not a new spouse made any significant financial or non-monetary contributions towards their living arrangements and capital assets
- the legal ownership of assets
- promises made by one spouse to the other.

The flow of inheritance in blended families

When someone is in a blended family, their Will needs to reflect the complexity and fullness of their individual situation—especially where it comes to dividing up that person's estate among their intended beneficiaries and working out what happens when certain persons pass and in what order (for example, assuming that the children will survive the spouse, and that the grandchild will survive the children, and so forth).

In other words, how will the assets of the Will-maker 'cascade' down the generations? Further, what if someone who is expected to survive another person passes away first, causing the assets (or a significant portion of them) to 'flow' in a different and unexpected direction? This is especially possible in a blended family situation.

An example of this would be to apply the standard Will approach to a classic blended family situation. Suppose each parent made a Will that simply said 'When I die, everything goes to my spouse, but if they do not survive me, then everything goes to my children in equal shares'.

If the father dies first, the wife inherits all of his assets, then when she passes all of her assets (which also includes her husband's assets) will flow to her own children on her death and none of the husband's assets would flow to his own children.

A similar and equally unfair result occurs if the wife dies first because when her husband dies, her own children all miss out on the flow of inheritance. Clearly, a more sophisticated approach is needed here to bring a more equitable result for all the children once both parents have passed.

Notional estate rules

Then there are different legal implications arising from the different types of beneficiaries in a blended family, which can vary greatly depending on the state or territory in which the Will-maker is domiciled. In particular, the so-called 'notional estate' rules under the *Succession Act 2006* (NSW) can easily lay waste to many strategies that might work in other states and territories to protect the Will-maker's assets from a claim against their estate.

Take for example a Will-maker who has a family home located in Queensland and wishes to ensure that their surviving spouse receives the family home without fear of it becoming exposed to a family provision claim by one of their children from a prior relationship.

An effective strategy to prevent the family home from forming part of the Will-maker's estate (and therefore

potentially exposed to a successful claim under family provision laws) is for the Will-maker to hold it as joint tenants with their spouse.

On the death of the Will-maker, the family home will not form part of their estate but will instead pass by right of survivorship to their spouse, and not be subject to any potential claim made against the deceased estate.

However, if the Will-maker and the family home are located in (or sufficiently connected to) New South Wales, it may be possible, in the course of a family provision claim against the estate, for the court to utilise the 'notional estate' provisions to 'claw back' the interest of the deceased in the family home from the surviving joint tenant and into the estate, so as to be able to satisfy a successful claim.

So, when considering estate planning for a blended family, just remember that each blended family situation is as individual as the Will-maker themselves, and that if you have seen one blended family—you have only seen one blended family. **FS**



The quote

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