

Planning Ahead



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Estate Planning for Remarriage

After the death of a spouse or divorce, finding love again is sweet. But the legal consequences of remarriage should not be ignored. It may not be enough to just keep assets separate. Children by a prior marriage may not end up with the inheritance that was intended if the couple fails to update their Wills and Trusts.

Harry was a widower when he found Wilma. They fell in love and married. Harry had a daughter who also loved Wilma and was happy for her father. Both Harry and Wilma had significant assets. They planned to keep their respective assets separate after marriage. Harry meant for his daughter to inherit his assets after he died, and Wilma planned to leave her estate to her favorite charity. Then, Harry died unexpectedly, without ever making a Will. Harry didn't think he needed a Will, he just thought everything would go to his daughter. She was a struggling schoolteacher and would need money. But, under California law that says "who gets what" when a person dies without a Will, Wilma was entitled to 1/2 of Harry's separate property estate. Harry's daughter was surprised and saddened to learn her inheritance would be limited to only 1/2 of her father's estate. If only Harry had left a Will!

Imagine the same story but this time Harry did leave a Will, but it was an old Will that he made shortly after his wife died, well before he met Wilma. Even in that case, Wilma would still be entitled to 1/2 of Harry's separate property estate because of California law that protects spouses from being left out of a Will. If a surviving spouse, married to the decedent after the decedent made his/her Will, is not provided for, or expressly not provided for, in other words the surviving spouse is not mentioned at all in the Will, the surviving spouse inherits the share he or she would have received as if the decedent had not left a Will. In planning to marry, Harry and Wilma should have made new Wills mentioning their upcoming marriage and expressly stating their intent not to provide for one another. If only Harry had updated his old Will stating his intent not to include Wilma, Harry's daughter would have received his entire estate as Harry intended.