

PLANNING FOR THE BRADY BUNCH

THE “BLENDED” FAMILY AND THE QTIP TRUST

By Bob Prior

*Here's the story of a lovely lady
Who was bringing up three very lovely girls.
All of them had hair of gold, like their mother,
The youngest one in curls.*

*Here's the story, of a man named Brady,
Who was busy with three boys of his own,
They were four men, living all together,
Yet they were all alone.*

*Till the one day when the lady met this fellow
And they knew it was much more than a hunch,
That this group must somehow form a family.
That's the way we all became the Brady Bunch.*

*The Brady Bunch,
The Brady Bunch,*

That's the way we became the Brady Bunch.



Marsha! Marsha! Marsha! Not once in all of those iconic 70s episodes did Florence Henderson and Robert Reed discuss the complexities of estate planning with their newly formed blended family. Did they have a prenuptial agreement that identified their assets and provided for their orderly disposition in the event of divorce or the death of one spouse? Did Mr. Brady have a plan if he died first to care for Mrs. Brady (and her “three very lovely girls”), while still ensuring that an inheritance was preserved for the “three boys of his own”? How would they pay for the kids’ education if Mr. or Mrs. Brady died? Was life insurance in place to ensure that the family could continue to employ Alice even without Mr. Brady’s architect salary?

Blended families are commonplace. They can often be healthy and functional; but they can also be a great source of contention. Many times, the parents are baffled about how to segregate assets, and how to balance caring for a surviving spouse at the death of the first spouse while leaving a legacy for the first spouse’s children. That lack of planning and uncertainty leads to hard feelings and unfortunately, lawsuits.

The first step in planning for the blended family is open and frank communication with the help of an estate planning attorney. What assets did each spouse bring to the marriage? Do the parents agree to leave an equal inheritance to all of the children, or do they want to allocate the inheritance based on each parent’s pre-marriage wealth? What reasonable steps do they want to take to provide for the surviving spouse while still preserving an inheritance for the children?

Once these basic planning issues are resolved, the professional steps in. A common tool in the blended family scenario is the use of a “QTIP” trust. It may sound like a cotton swab, but its actual name is formidable: The Qualified Terminable Interest Property trust. The concept developed in the context of estate tax planning. While that topic is beyond the scope of this article, the basic idea with the QTIP trust is that it allows the trust property to qualify for the “marital deduction” for estate taxes due at the first death, while also allowing certain restrictions on the use of that trust property.

A QTIP trust provides limited access to the trust assets for a

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surviving spouse. Although the spouse may receive income from the trust, he or she cannot decide on the ultimate disposition of the trust assets and (with a limited exception) cannot withdraw principal from the trust. Upon the death of the surviving spouse, the remaining trust property is distributed according to the instructions of the first spouse.

The exception to the rule that the surviving spouse cannot withdraw principal is known as a “5 and 5” power. The QTIP trust may be written to provide the greater of \$5,000 or 5% of the trust assets to the surviving spouse annually.

By way of example, and in the context of the Brady Bunch, Mr. Brady could have drafted his will (or living trust) to provide that at his death some or all of his pre-marital assets would be transferred to a QTIP trust for the benefit of Mrs. Brady. Those assets could include real estate and investment accounts. Mrs. Brady would be allowed all of the income from the trust during her life (the rent from real estate, or the interest and dividends from investment accounts). At Mrs. Brady’s death, the balance of the trust could be left to the three boys.

If you have a blended family, don’t be like the Bradys. Ask your estate planning attorney whether a QTIP trust is appropriate for you.



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