

Are You Disinheriting Your Children Without Even Knowing?

“When I die, I want everything to go to my wife, and when she dies, then it goes to the kids. My estate is simple.” This statement, or one to this effect, is often heard by estate planning attorneys and financial advisors. It is a typical situation to want to provide for your spouse after your death and eventually have your children receive an inheritance. Since this scenario seems simple enough, most married couples execute what are referred to as ‘I Love You’ wills, where both spouses leave everything to the other spouse and then equally to the children. This level of estate planning tends to bring peace of mind and lays to rest that nagging and uneasy feeling associated with not having an estate plan. The ‘I Love You’ wills detail exactly the transfer of assets that is desired, so what could go wrong?

This plan works well up through the husband’s death (we will assume for this example that the husband dies before the wife). Everything goes to the surviving wife as it should. So far, so good. Now, if the wife does not remarry, upon her death, her assets will be split among the children. However, should the wife get remarried, the simple estate plan is suddenly jeopardized by a very common occurrence.

What happens next is all too common, and almost always unintentional. As the new couple’s lives come together, so do their bank accounts, investments, insurance, real estate, automobiles and virtually every other asset that a married couple could own together. If the ‘I Love You’ will that was created during the first marriage to ensure that everything goes to the kids has *not* been updated, the will still directs that everything that the wife owns in her own name will pass to the kids. BUT the assets that are owned jointly between the wife and the new husband pass directly to the new husband regardless of what the will says! It is the law that a will only operates on assets that are held in an individual’s sole name. If the ‘I Love You’ will *has* been updated to substitute the new husband’s name in the will, everything owned jointly *and* individually passes to the new husband, and not to the kids.

At this point, assuming that the wife of the original marriage dies before her new husband, everything this married couple worked their lives for is owned entirely by someone completely unrelated to the kids. AND the new husband has no obligation to give anything to the kids. In effect, through this very natural course of events, this couple has disinherited their children.

Now, to make this situation worse, even if the new husband decides to ‘do the right thing’ and give money to the kids upon the death of their mother, he has to pay tax on that gift. The tax laws in this instance create a barrier and a disincentive to ‘doing the right thing,’ and increase the chances that the kids will in fact be disinherited.

As an estate planning attorney, rarely do I meet a married couple whose wishes are to leave nothing to their children. However, I frequently encounter this situation where a seemingly simple estate plan is potentially on its way to these serious and unintended consequences.

The good news is that this situation can be completely avoided with proactive planning! If this article has piqued your interest or caused some concern, please give us a call. It would be our pleasure to speak with you.