



(L-R)Melanie Cuddyre and Stefanie Pate of Leech Tishman Fuscaldo & Lampl. Courtesy photos

COMMENTARY

The Modern Cleaver Family: Estate Planning for the Untraditional Family

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Trusts and Estates

By Melanie Cuddyre and Stefanie Pate

If “Leave It to Beaver” were “rebooted” and updated to reflect today’s average U.S. family, it would look a little different. Ward and June Cleaver may be on their second marriage, with children both from previous relationships and marital children. One of their children may be cohabitating with a significant other, with no intent to marry. Wally may be a physician, with a high risk of personal liability, while Beaver is going through a divorce. These, and other untraditional characteristics of the modern family, create additional considerations for individuals when building their estate plans and highlight the importance of putting a plan in place.

Default Inheritance Laws

Inheritance is governed by the laws of the state in which you reside at your death. Most inheritance laws have remained substantially unchanged for long time. If an individual dies without a Will, their assets are typically divided between their spouse and biological children outright and free of trust. If their children are minors, the county level courts are involved to protect the interests of the minor.

If you look at the modern Ward and June Cleaver, you can see how these default laws do not fit their blended family. Each has children from a previous relationship, who their spouse may treat and view as their own. Upon Ward’s death, the default laws do not provide for his stepchildren, despite how Ward may feel about those children. Through a Will, Ward and June could each carve out specific provisions for their stepchildren and biological children to ensure that their wishes are addressed.

Assume one child is cohabitating with a significant other with whom she intends to be life partner but does not wish to marry. Default laws will not provide for her life partner. Assets titled in such child’s individual name will not be inherited by the partner absent a testamentary document which directs inheritance. Perhaps such child owns the house that they reside in and wants to allow their partner to have a life estate in the house so long as they are not in a new relationship. Alternatively, such child may wish to give their partner the ability to purchase the house upon their death. A Will allows the child to override the default inheritance laws, where they want to, and provide for their partner.

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When minor children inherit from their parents who did not have a Will in place, or whose Will did not specifically provide for the possibility that a parent would die with minor children, the assets typically are distributed outright to the minor. This results in court involvement, as minors are unable to inherit outright during their minority. The court may appoint someone to manage the inheritance until the child has reached age 18, and order accountings be filed on a regular basis. To avoid this, parents can establish testamentary trusts for their children during their minority and appoint someone they trust to manage the assets.

The default inheritance laws may result in undesirable outcomes for individuals. Execution of a Will, or similar testamentary document, allows individuals to curtail these default laws, and ensure their wishes are carried out.

Premarital Agreements

Prior to Beaver's marriage, assume he owned all of his assets in his individual name. Assume Beaver was also involved in a start-up business with his stepsister that he expected to be relatively successful. When individuals get married, assets that they transfer into joint name, and possibly the growth of assets held individually, become marital property. If a couple goes through divorce proceedings, their marital assets are subject to equitable distribution. State laws vary as to what happens to marital assets, but typically the assets are divided between the parties. For Beaver, this means that 50% of his interest in the successful start-up and accounts where his paycheck is deposited could be court ordered to go to his spouse. For many, this is an unfair and undesirable outcome.

Premarital agreements have a bad reputation. They are often considered a tool to protect wealthy families or viewed as an assumption that a marriage will fail. However, premarital agreements can be useful to almost everyone. Married couples will endure many obstacles and emotions can run high. A premarital agreement allows a couple to address, prior to the marriage, the "what if"

scenarios—what if we are separated, what if one of us files for divorce, what if we are married our entire lives and one of us dies. The answers to these questions can be laid out in an agreement and agreed upon before emotions are involved.

In the event of divorce, Beaver could choose to protect his business interest, but agree to divide any dividends paid to him during his marriage. He may agree to keep a life insurance policy in place, so that his spouse does not have to worry about finances if he were to die prematurely. Most “what if” situations can be addressed, so that when the time comes, a couple can feel comforted that a plan is already in place.

Asset Protection

Unfortunately, modern society has become increasingly more litigious. Individuals who are employed in a high-risk profession, such as medicine, construction, etc. expose themselves to liability every day. It is not a question of whether something will happen, but a question of when it will happen. In most states, a court judgment against a person will put their individual assets at risk.

As part of the estate planning process, it is important for individuals to consider the best way to protect themselves and their assets. In a state which allows such ownership, a married couple may own all of their property as tenants by the entirety to ensure a judgment against one spouse could not reach joint assets. However, titling assets jointly is not always an available or desired option. For unmarried individuals, or couples who prefer to keep their assets separate, there is increased exposure. Wally, a single physician, may consider creating an irrevocable trust that is set up so that it is outside of the reach of creditors. Depending on the type of trust, Wally may still be able to use the trust assets for his own benefit even though creditors cannot reach it. Upon his death, Wally may also wish to transition his practice to a business partner without exposing the business to the reach of his creditors. A business succession plan can help to accomplish his goals, while protecting the business he worked so hard to create.

The laws that apply to estate planning tend to be reactive instead of proactive. If someone does not sign a will, the law directs assets accordingly. If someone does not consider the “what if,” the law will determine what happens next. For many people, the default is not preferable and does not fit their specific circumstances. Fortunately, numerous estate planning techniques allow individuals to be proactive in planning for the complexities and diversity of modern life. The story of a modern Cleaver may look different, but a well-structured estate plan can address the evolving needs of the whole family.

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