

ESTATE PLANNING

My client is
getting remarried



Starting the
planning
conversation
when your client
is remarrying

How can I help my client?

As your clients' trusted advisor, you are in a position to motivate them to address the big financial and estate planning issues prior to the big day. If you know that your client is planning to get remarried, there are several key questions you can use to initiate and guide a conversation that will help the new couple start off their marriage on the right financial foot.

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Planning for a new chapter

Even though a second marriage usually occurs later in life, at a time when a client's financial and personal situations are more complex, these "other-than-first" marriages are often not given due regard when it comes to financial planning and preparation. This is especially ironic when you consider that a remarriage often follows a divorce, where the client has already personally experienced the pitfalls of poor planning (or, less often, the benefits of adequate foresight) in this regard.

For ease of use and consistency, we will refer to the client's fiancée as his "spouse" throughout this document.

When meeting with a client who is getting remarried, consider using this checklist of relevant financial and estate planning considerations:

Spouse's financial picture

- ✓ Assets, liabilities, income sources, beneficial interests
- ✓ Ongoing financial obligations from prior marriage
- ✓ Sharing of joint expenses

Estate planning update

- ✓ Coordination with divorce decree and prenup
- ✓ Contemplation of divorce
- ✓ Beneficiary designations

Prenuptial agreement

- ✓ Purpose of prenups: set and manage expectations
- ✓ Importance of timing and representation

Blended family concerns

- ✓ Possibility of joint children
- ✓ Surviving spouse versus children from prior marriage
- ✓ Providing for stepchildren

Does the client understand what he's getting into from a financial perspective?

As with any major life event, transparency and communication are key. The client should have complete answers to the following questions regarding his spouse's financial situation *before* he says "I do":

- What does the spouse's overall financial picture look like? It is important for the client to have a firm grasp of what his spouse owns, the extent of any debt, and any other income sources his spouse may benefit from (e.g., a beneficial interest in an irrevocable trust).
- Does the spouse have any ongoing financial obligations to a former spouse or children from a previous marriage? When do these obligations terminate, if at all?
- What will the client be expected to pay for when it comes to joint expenses and the spouse's individual expenses? This is especially important if you're dealing with a blended family with young children.
- What rights and benefits do the spouse's estate planning documents provide for the client? This becomes particularly relevant when the spouse is bringing substantial assets to the marriage, or if joint children are a possibility in the future.

Although prenup negotiations bring up difficult issues, they make couples aware of future friction points and allow them to address these issues with less emotion.

Has the client considered a prenuptial agreement?

Prenuptial agreements serve an important purpose: providing for what happens from a financial perspective when the marriage ends, whether by death or divorce. Prenuptial agreements also manage expectations. Although prenuptial negotiations bring up difficult issues, they make couples aware of future friction points and allow them to address these issues with less emotion.

There are two primary reasons prenuptial agreements are invalidated: (1) the agreement was finalized too close to the wedding day, and (2) one of the parties had inadequate representation. Because prenuptial negotiations are often sticky and drawn-out, the process should begin several months before the scheduled nuptials; ideally, the prenuptial agreement should be finalized and signed before the invitations are sent. State law governs the validity of prenups, so it is essential that both the client and his future spouse each have their own competent, local legal representation.



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Has the client updated his estate plan to contemplate his new spouse?

A new marriage brings about new obligations and concerns regarding family and finances, so the client should review and update his current estate planning documents. The most important thing is that the client has an experienced estate planning attorney guiding him through the process, but you can prepare him for this process by arming him with some key questions to work through with his attorney:

- Has the estate plan been coordinated with the divorce decree from the client's prior marriage, as well as the prenup, if any? Both types of agreements can impose obligations that must be fulfilled through a client's estate planning documents. These types of obligations are usually considered contractual and enforceable. Even if they are not contemplated by the estate planning documents, they will most likely still be fulfilled; however, as with most things involving death and money, it is better for everyone – and all documents – to be on the same page.
- How do the estate planning documents address the possibility of divorce? If the client includes his new spouse as a beneficiary or fiduciary under his estate planning documents, he should consider whether he wants the rights associated with these designations to terminate in the event of a divorce. Either way, the estate planning documents should explicitly address this condition. Depending on the client's particular situation, he may want to discuss with the attorney whether the spouse's rights and benefits should terminate upon the filing of any separation- or divorce-related petition, as opposed to the actual event of divorce (which can occur long after the marriage is actually over).

What issues related to the client's blended family need to be addressed in the estate planning documents?

Second and third marriages often result in blended families, and the client should evaluate how he wants to provide for everyone in his "new" family, as well as his ex-spouse and any children from prior marriages, upon death. The client should make sure to address the following topics with his estate planning attorney:

- If there is the possibility of children from this new marriage, how will these children be provided for under the client's estate planning documents? Depending on his age and the potential ages of these theoretical children, the client may want to consider restructuring his estate plan to take into account the real possibility that he could die while his children are still minors; if they're assumed to be independent adults, the approach will be very different. Because we're dealing with joint children, the spouse should be involved in this conversation.
- How will the estate planning documents handle the tension between the surviving spouse and the children from the client's prior marriage? Depending on the relationship between the client's children and their stepmother, as well as the ages of the various parties involved, providing for separate pools of assets may be the best solution. Even if relations are generally amicable, if the spouse and the children are not separated by a "traditional" parent-child age gap, leaving everything to the spouse (even in the protected environment of a marital trust) and then to the children after the spouse's death is a recipe for disaster. One common way to create a separate pool of assets to manage this type of situation is to use an insurance policy or a separate irrevocable trust to provide for the surviving spouse or even the children outside of the client's estate.
- If the client's new spouse has children from a prior marriage, does the client want to provide for them upon his death, separate and apart from the spouse? If the client has a close relationship with his stepchildren – depending on their ages, the spouse's financial situation and the client's relationship with his own children – he may want to include provisions for the stepchildren in his estate planning documents. It is important for the client to consider the relationship between his own children and stepchildren in structuring these provisions – again, creating separate pools of assets without any cross-involvement or comanagement may be the best option. The client should also decide whether he wants the provisions for stepchildren to be conditional based on the status of his current marriage, or if he wants to provide for them even in the event of divorce.

Starting the conversation

When a client gets remarried, he is adding layers of complexity to his life: new family members, additional financial obligations and a whole host of unpredictable dynamics. As your client's trusted advisor, you can bring awareness to the potential pitfalls that accompany this type of familial and financial complexity. By addressing the questions on the previous page with your client before he says "I do," you are giving him the tools he needs to set expectations, establish boundaries and help manage risk, and, more importantly, give blended-family harmony a fighting chance.

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