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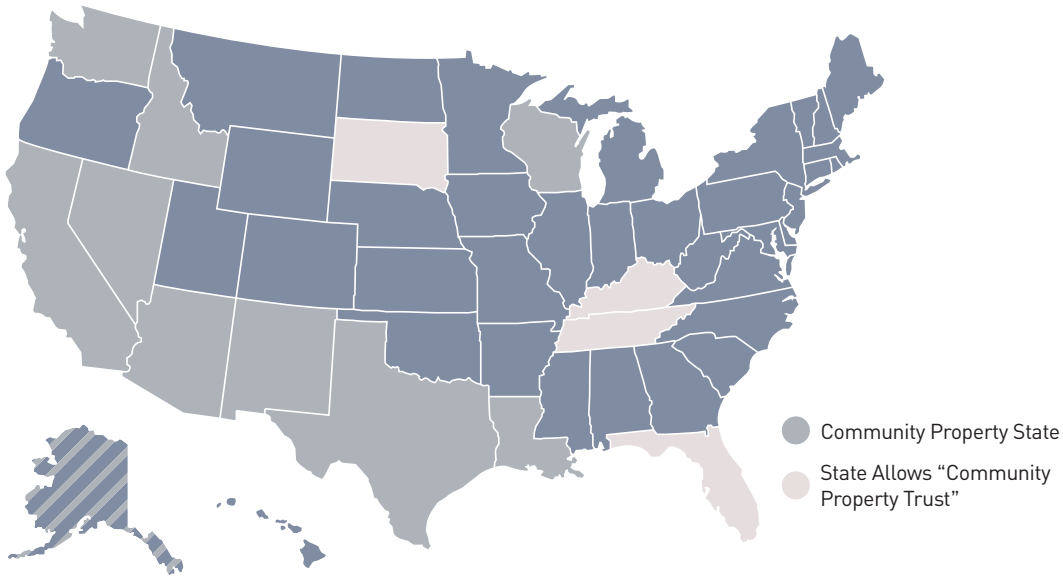
ESTATE PLANNING FOR THE BLENDED FAMILY

Each family is different and complicated in its own way. Two families blended together can increase complexity exponentially. These complexities can make matters particularly difficult when considering how to provide for the members of a blended family following death.

According to a study published in *Demography*, "...nearly 30% of American households have a stepkin tie in either the parent or adult child generation of their family and that stepkin ties are more common among households headed by younger adults. Moreover, stepkin dramatically increase the size of families. Among households whose heads and wives have living parents, stepparents increase the total number of parents by close to 20%; among households headed by married couples who have adult children, stepchildren increase the total number of children by 66%."[1]

With such large families and such great diversity of members, it is no wonder estate planning for a blended family can be complex. Each family will need to craft an estate plan, dividing property and providing for its members, that fits its unique circumstances.

This article focuses on estate planning for the blended family. Of course, it is not possible to outline every possible family configuration and how to plan for the passing away of family members. Nevertheless, following are some general thoughts about estate planning in blended families.



BEFORE BEGINNING, UNDERSTAND THE RULES

RULES REGARDING PROPERTY

If you make a will (or a pour-over will and revocable trust)[2] disposing of your assets at death, most states prohibit you from disinheriting your surviving spouse. Currently, Georgia is the only state in the union that does not provide for some allocation of a decedent's property to a surviving spouse, although the spouse may petition for one-year's support from the decedent's estate.[3] Each state's law is different, and it is not possible to discuss each state's laws with respect to a disinherited spouse in detail here. However, following are some general thoughts about property rights following death.

Generally, in **common law** states, a surviving spouse is entitled to some percentage of the value of the decedent's estate. Some states augment the value of the decedent's estate with certain property passing outside of the estate (such as gifts over which the decedent retained an interest or gifts made within a certain time before the decedent's death).[4] The surviving spouse may elect to receive this minimum share or take what was left to the spouse under the decedent's will. This choice can sometimes produce interesting results. Sometimes, a spouse will elect to receive the minimum share outright, rather than receiving a larger amount in trust.

Generally, in **community property** states, the surviving spouse owns one-half of the community assets and the deceased spouse may be free to dispose of the deceased spouse's separate property and share of community property in any manner to any person (disinheriting the surviving spouse with respect to that property). In some community property states, a surviving spouse has the right to receive a share of a decedent's "quasi-community property" in addition to the spouse's share of community property.[5] However not all community property states follow this concept. If you live in a community property state, it is important to understand your property rights following your spouse's death. If your state allows a surviving spouse to receive only the surviving spouse's

share of community property and (for whatever reason) there is no community property, the surviving spouse could receive nothing following the deceased spouse's death.

If you move from a common law jurisdiction to a community property jurisdiction, property acquired while in the common law state may be treated as community property if it would have been community property had it been acquired in the community property state.[6] If moving from a community property state to a common law state, community property may retain its characteristics as such in the common law jurisdiction.[7] Before relocating, you should consult an attorney in your prospective state of residence to understand the laws of that state before you move, and plan accordingly.

Some states also grant a surviving spouse certain property to help maintain the family following the deceased spouse's death. These assets, often known as exempt property, pass to the spouse outside of the deceased spouse's will (although they are paid from the deceased spouse's estate).[8] Some states also give a surviving spouse specific rights in the family homestead.[9]

Unless unmarried cohabitants have entered into a civil union or other arrangement under state law that confers upon them rights similar to a married couple, an unmarried cohabitant, generally, has no right to receive property from a deceased cohabitant. Some cohabitants may be able to obtain property from a decedent's estate by proving that the decedent had made a contract to leave the unmarried cohabitant property following death. The law varies greatly from state to state, with some states requiring cohabitation agreements to be in writing[10] and others not allowing them at all.[11] Without a written contract, it may be difficult to prove that there was an agreement between the cohabitants because of evidentiary rules like the so-called "dead man's rule."[12]

Generally, only a spouse or a cohabitant who has entered into a civil union or other arrangement under state law that confers benefits similar to marriage, is protected from being disinherited. Generally, a decedent is free to disinherit anyone else, including children, parents, siblings and other relatives.

If you die without a valid will (dying intestate), the state law of intestate succession (sometimes herein, intestacy) will determine who will receive your property (that you own in your name alone) following your death. Your state's intestacy laws may distribute your property in undesired ways. For example, if you are married but have children from a prior marriage, some state intestacy statutes will divide your estate between your current spouse and your children from your prior



marriage according to percentages directed by the statute.[13] Generally, unmarried cohabitants who have not entered into a civil union or other arrangement under state law that confers rights similar to marriage and stepchildren who have not been legally adopted will not receive inheritances pursuant to the laws of intestacy. It is not possible to review the laws of intestate succession for each state here. To learn how your state's law would impact you and your family, consult an attorney in your state who is experienced in the law of estate planning.

Other types of property pass to beneficiaries outside of your estate (not pursuant to your will or the laws of intestacy).

Certain property, such as life insurance death benefits, some annuity death benefits, qualified retirement plans, IRAs, transfer or payable on death accounts (TOD or POD accounts), Totten trusts, certain non-qualified deferred compensation plans, and some other types of property, pass by the terms of the contract governing the plan, policy or account. In most cases, the property passes to the beneficiaries that you name in a beneficiary designation. Failure to name a beneficiary may result in the benefit being distributed to the default beneficiaries designated in the contract, which could be different from your desired result and, possibly, cause adverse tax consequences.

Adding someone as a co-owner of an account or other asset (creating a co-tenancy) may give the co-owner the right to receive some or all of that property when you die.

A tenancy-in-common and a joint tenancy with right of survivorship allow both owners to access the property during lifetime. However, upon the death of one co-owner, the survivorship rights are different. With a tenancy-in-common, one-half of the property belongs to the surviving owner, while the other half passes pursuant to the deceased owner's will

or the laws of intestacy. With a joint tenancy with right of survivorship, the surviving co-owner (generally) receives the entire property by operation of law, and no part of the property passes pursuant to the deceased owner's will or the laws of intestacy.

A tenancy-by-the-entirety confers rights similar to a joint tenancy, but may also protect the asset from certain creditors. Only married persons can create a tenancy-by-the-entirety. Since a tenancy-by-the-entirety is a non-severable tenancy (both spouses, acting together, are required to transfer the property), a creditor of one spouse cannot force the division of the asset to satisfy that creditor's claim. Of course, a creditor of both spouses can attach the property. State laws vary with respect to the creation of tenancies-by-the-entirety. Some states don't allow their creation, and others allow only real property to be owned this way, while other states allow any property to be so titled. Consult an attorney in your state to understand how the rules with respect to property ownership will apply in your case.

Convenience accounts are joint accounts sometimes created by an older family member with a younger family member as co-owner so that a younger family member can access the funds in an account to manage them and care for the older family member. If a joint tenancy with right of survivorship was created for the convenience of one of the owners (a convenience account), the entire property may pass under the will of the deceased owner.[14]

RULES REGARDING TAXATION

Entire books have been written about federal and state estate and inheritance taxes. As such, it is not possible to outline the many nuances that go into planning to minimize estate and inheritance taxes. Nevertheless, below are some considerations regarding those taxes and their potential impact on a blended family. To determine how federal and state estate and inheritance taxes could impact your family, consult with an attorney experienced in estate and tax planning law.

Generally, U.S. citizens and residents are subject to federal estate tax on the value of their worldwide assets. Also subject to federal estate tax is the value of assets previously transferred over which the transferor retained some measure of control or retained an economic interest[15] and the value of property over which a citizen or resident has a general power of appointment at death.[16] A citizen or resident individual is permitted certain deductions from the gross estate when determining the taxable estate. These include a deduction for state death tax, a deduction for property passing to (or to certain trusts for) a surviving spouse, a deduction for property passing to charity, a deduction for certain expenses of administering an estate and a deduction for certain losses.

If the value of the citizen or resident's taxable estate exceeds the amount of such person's exclusion from the gift and estate tax that has not been used to shelter lifetime taxable gifts from gift tax, the excess amount is subject to a 40% federal estate tax. For 2023, the total gift and estate tax exclusion available to a citizen or resident is $12.92 million.[17] Certain transfers to persons two or more generations below the transferor or to certain trusts that can benefit such persons may be subject to the generation-skipping transfer tax (GSTT). Although not discussed in detail in this article, there is also an exemption from the GSTT, which for 2023 is also $12.92 million.[18]

The federal estate tax confers certain benefits on married couples that are not available to unmarried cohabitants.[19] Among these benefits are portability of unused estate tax exclusion and the federal estate tax marital deduction.

Portability is a colloquialism for the following federal estate tax benefit: upon the death of the first spouse of a married couple to die, if that spouse does not fully utilize that spouse's exclusion from the estate tax, subject to some exceptions, the surviving spouse is able to later use the deceased spouse's unused exclusion amount (either during life or upon the surviving spouse's subsequent death), in addition to the surviving spouse's own exclusion amount.[20]

The marital deduction is particularly important, as it allows unlimited property to pass from one spouse to the other spouse upon death (or during life) without an estate (or during life, a gift) tax. It has been said that marriage is, among other things, an economic partnership.[21] Congress recognized this by creating the unlimited marital deduction.

> [T]he unlimited marital deduction now allowed treats a married couple as a single economic unit and defers transfer tax until property is transferred outside of that unit …Thus, property transferred from the first spouse to die to the surviving spouse is generally exempt from estate tax. But that exemption is premised on the expectation that the property will be subject to estate tax on the death of the second spouse (unless consumed during [the spouse's] life or transferred by gift and thus subject to gift tax).[22]

It is important to reiterate that these (and other) federal tax benefits are not available to unmarried cohabitants. Many states impose their own estate or inheritance taxes. When planning for state death taxes, married persons and stepchildren are often provided benefits that unmarried cohabitants and their children are not, such as lower tax rates.[23]

CHANGING THE DEFAULT RULES — RULES FOR YOUR RELATIONSHIP

Many of the default rules regarding relationships can be modified by agreement. If you are planning to marry, they can be modified by a prenuptial agreement. If you are already married, they can be modified by a postnuptial agreement. If you are planning to cohabit without being married, many states allow them to be modified by a cohabitation agreement. Each of these agreements is a binding contract and should be treated like any other important legal transaction. Each person entering into the agreement should be represented by a separate attorney skilled in the law of domestic relations and estate planning. Although this seems complicated, it is generally required by the rules of attorney ethics[24] and ensures that there is a skilled advisor to protect the rights of each person.

State law sets the rules for creating prenuptial, postnuptial and cohabitation agreements. Different standards apply to each type of agreement. For example, since spouses stand in a fiduciary relationship to one another,[25] there is a higher duty of good faith and fair dealing between spouses when negotiating a postnuptial agreement that may not apply when negotiating a prenuptial agreement. "Agreements between spouses, unlike ordinary business contracts, involve a fiduciary relationship requiring the utmost of good faith."[26] Differences in state law can be important, as not all states recognize or enforce postnuptial agreements between married persons or cohabitation agreements between unmarried parties. For example, Ohio does not allow postnuptial agreements[27] and in Illinois, "unmarried individuals may make express or implied contracts with one another, and such contracts will be enforceable if they are not based on a relationship indistinguishable from marriage."[28]

Many state law rules can only be changed by agreement between the parties to the relationship. Among the default rules that can be changed is the division of property following an owner's death, including statutory minimum share rules for a surviving spouse, and rules permitting beneficiaries to be disinherited.



Often when families are blended, each family brings property to the relationship. Many times, a family's property is unique, such as interests in a family business, a vacation home owned for many generations, fine art or family heirlooms. It is not uncommon for one side of a blended family to want to keep such assets rather than have them pass to a second spouse/stepparent. Sometimes, to allow property to benefit a surviving spouse, while ensuring it remains in the decedent's family line, the decedent will create a trust for the surviving spouse, for life, which will pass to the decedent's family when the surviving spouse dies. However, property dispositions such as these may prompt a surviving spouse to elect to receive the statutory minimum share allowed by law, potentially causing property that one spouse desires to retain in that spouse's family to be distributed elsewhere.

To eliminate the risk that a surviving spouse will take the statutory minimum share of an estate, spouses can agree to waive their minimum share rights under state law. The waiver can be made in a prenuptial or postnuptial agreement. Some states allow a waiver to be made in a stand-alone document without the need for consideration (the *quid pro quo* required to make a contract).[29] In community property states, marital agreements can transmute community property into separate property and separate property into community property, impacting the minimum amounts available for a surviving spouse when the first spouse dies.

Marital agreements, as well as cohabitation agreements, can *require* transfers of property upon death to a surviving spouse or cohabitant. With respect to a surviving spouse, such an agreement could substitute a specified gift for the statutory minimum. If you are not married, a cohabitation agreement can require the surviving cohabitant receives a bequest of property when the first cohabitant dies. In this way, the parties can craft a minimum bequest that suits the needs of their family, such as a certain dollar amount in a trust for a surviving spouse or cohabitant or requiring each spouse or cohabitant to provide a certain amount of life insurance death benefit for the other.

Remember, your marital agreement or cohabitation agreement sets a floor — the minimum amount that you must be bequeathed to your surviving spouse or cohabitant. It is not a ceiling, as you can always give more than the minimum.

ESTATE PLANNING IN A BLENDED FAMILY

When preparing an estate plan for a blended family, there are often competing interests. For example, how do you adequately provide for a second spouse or cohabitant while ensuring that your property eventually gets to your descendants? Perhaps you have certain property, such as an ownership interest in a family business, that you do not want your spouse (or cohabitant) or stepchildren to receive. Alternatively, perhaps you have had a long-term parental relationship with your stepchildren and wish to include them as equal beneficiaries with your children. Alternatively, you might want to include gifts to your stepchildren, but leave your children something more than what you give to stepchildren.

Those are just some of the thorny issues that can arise when creating an estate plan for a blended family. Following are some planning suggestions to consider when making an estate plan for your blended family. Of course, it is not possible to discuss every nuance of estate planning here, and not every suggestion here will be appropriate for your family and its unique circumstances. When crafting any estate plan, particularly in a blended family, consult an attorney in your state who is skilled in the law of estate planning.

Create a plan that works for your family.



DETERMINE WHO SHOULD RECEIVE PROPERTY FOLLOWING YOUR DEATH.

- How much should each person receive and in what form should property be received (outright or in a trust)? Should stepchildren receive bequests?
- Should stepchildren and children be treated equally?
- If you devote significant assets to supporting the children of your current marriage, will there be anything left for children of your prior marriage?
- If you need to make an agreement waiving state law spousal rights to accomplish the plan, do so.
- Families change over time and your plan should change, as necessary, too.

PROTECT YOUR FAMILY'S ASSETS (IF DESIRED).

- If you don't want certain family assets to end up with your spouse, cohabitant or that person's children, if you are married, make an agreement wherein you both waive your statutory minimum share of the other's estate.
- Be sure your estate planning documents bequeath assets to the people you want to receive them.
- If you want your spouse or cohabitant to have access to certain of your assets (or the income from those assets) during life, but for those assets later to end up with your descendants when your spouse later dies, consider creating a trust for your spouse or cohabitant from which they can receive benefits during life. Following their death, the property in the trust will pass to or be held in a further trust for your descendants.

CONSIDER TIMING — PARTICULARLY AGE DIFFERENCES — WHEN MAKING YOUR PLAN.

- If your spouse or cohabitant is close in age to your older children, leaving all (or much of) your property in a trust for your spouse or cohabitant could effectively disinherit your older children, as they may not survive your spouse or cohabitant.
- If you have a child later in life, consider the possibility of dying before that child attains adulthood and how you would want to support that child should you die.

BE AWARE OF HOW ASSETS ARE TITLED AND THE IMPACT OF OWNERSHIP.

- When adding someone as a co-owner on a parcel of real property or financial account, understand the rights that they acquire upon becoming a co-owner and upon your subsequent death.
- Be cautious when creating convenience accounts. Convenience accounts are joint accounts sometimes created by an older family member with a younger family member as co-owner so that the younger family member can access the funds in an account to manage and care for the older family member. If a joint tenancy with right of survivorship was created for the convenience of one of the owners (a convenience account), the entire property may pass under the will of the deceased owner.[30] Since it can be difficult to prove a deceased owner's intent following death, creating a convenience account may cause family discord following the death of a co-owner. Discord can occur when the surviving owner claims ownership of the entire account, thereby preventing it from passing under the decedent's will to other beneficiaries. For example, if a stepchild claimed ownership over a convenience account that otherwise would have passed to the deceased owner's biological children under the deceased owner's will. Accordingly, during life, it may be better to use other forms of property management, such as a durable power of attorney.
- Upon marriage, your spouse may acquire rights in your employer provided retirement plan, unless the rights are waived. Unless waived, your spouse has the right to receive a joint and survivor annuity from your employer provided retirement plan.[31] Be sure that any waiver qualifies as a waiver of this right. A waiver in a prenuptial agreement or postnuptial agreement may not, on its own, be sufficient.[32] Your spouse does not have this right over an IRA. However, in **community property** states, spousal consent may be required with respect to distributions from an IRA to someone other than the spouse.

CONSIDER USING LIFE INSURANCE.

- As noted above, blended families can be large. Perhaps the family's combined resources are insufficient to provide for the entire family after the death of one spouse (particularly if the spouse is the primary wage earner). In that case, consider how a life insurance death benefit can provide additional resources to your family following your death.
- If you would like to provide for a spouse or cohabitant while also leaving considerable assets to children from a prior marriage, consider how a life insurance death benefit could provide for your spouse or cohabitant while allowing you to direct other property to other beneficiaries.
- If there are age disparities, life insurance can provide a pool of resources for younger children. Also, if your spouse or cohabitant is similar in age to your older children, a life insurance death benefit can ensure that your older children are not disinherited simply by dying before their stepparent.

BE CAUTIOUS WHEN NAMING FIDUCIARIES.

- If you create a trust for the benefit of your spouse or cohabitant, and you nominate a child from your previous marriage as trustee, consider the friction that can arise each time your spouse or cohabitant must ask a stepchild for funds.
- Similarly, if you name a second spouse as trustee of a trust for a group of children that includes children from your first and second marriage, consider the friction that could arise if the spouse exercised the powers as trustee to benefit the spouse's children to the exclusion of the children from your prior marriage.
- If you have adult children and a second spouse or cohabitant, consider who should be the executor of your estate.
- Consider whether family members should be paid for serving as fiduciary. Consider the friction that could arise between a stepparent and children from a prior marriage if one insisted on being paid for serving as a fiduciary (especially in a state where fiduciary compensation is not fixed by law).
- Consider naming a neutral party as executor or trustee, such as a bank or trust company. Alternatively, if both a stepparent and child serve as fiduciary, consider naming a neutral party to act as tiebreaker. The PNC Private Bank® has a long tradition of serving as executor and trustee.



UNDERSTAND THE TAX CONSEQUENCES OF YOUR ACTIONS.

- Consider taking advantage of estate tax mitigating techniques, such as trusts that qualify for the marital deduction.
- Consider using life insurance to transfer wealth. Life insurance is a tax-favored asset. In most cases, cash value builds inside a life insurance policy without income tax. Subject to certain exceptions, the death benefit when paid is also not subject to income tax.[33] Further, if the insured does not own the policy, does not have incidents of ownership over the policy and the death benefit is not paid to the insured's estate, the death benefit received from the policy would not be subject to estate tax.[34] To avoid estate tax on the death benefit (and to accomplish other planning goals), a common planning strategy would cause a policy of life insurance to be owned by an irrevocable life insurance trust (ILIT).
- Consider income tax as well as estate tax. For example, it may be better for a surviving spouse to receive an IRA account, rather than an adult child. A surviving spouse is an eligible designated beneficiary and may be able to roll the account over into the spouse's own account or stretch the payments out over the spouse's life expectancy.

SEEK ASSISTANCE

Estate planning in ordinary circumstances is complicated. When planning for blended families, the complexity multiplies. It is important to obtain assistance when thinking about planning for a blended family. Planning begins even before the family comes together. Your PNC Private Bank Wealth Strategist can help you think about your plan and distill your thoughts into concrete goals and objectives. Working with your attorney and accountant, your PNC Team can help you create a plan that works for your unique family and its various members. To learn more, contact any member of your PNC Private Bank team.

END NOTES

1 Emily E. Wiemers, Judith A. Seltzer, Robert F. Schoeni, V. Joseph Hotz, and Suzanne M. Bianchi, "Stepfamily Structure and Transfers Between Generations in U.S. Families," in Demography vol. 56, no, 1, pp. 229-260. Copyright 2018, Population Association of America. All rights reserved. Reprinted by permission of the publisher. www.dukeupress.edu (last accessed June 3, 2022).

2 Some attorneys use a two-document structure, incorporating both a "pour over" will and a revocable trust (which contains the dispositive terms of your plan). A "pour over" will directs that some or all of your property not already contributed to the revocable trust during your lifetime be distributed to this trust upon your passing. All assets in your trust will be distributed (or held in further trust) in accordance with the terms of the trust. For ease of reference, in this article, we describe the attributes of a will with the understanding that your attorney may use the two-document structure of a will that pours over into a revocable trust.

3 Ga. Code §53-3-3 (2019).

4 *E.g.*, N.J. Stat. §3B:8-3.

5 Idaho Statutes §§15-2-201 through 15-2-203 (allowing a surviving spouse to elect to receive a share of quasi-community property and a share of the decedent's augmented estate).

6 *E.g.*, Tx. Fam. Code §7.002.

7 *Commonwealth v. Terjen*, 197 Va. 596 (1956); Quintana v. Ordono, 195 S.2d 577, *cert. discharged affirming and adopting lower court opinion*, 202 So.2d 178 (Fla. 1967).

8 *E.g.*, 20 Pa.C.S. §3121; N.Y. EPTL §5-3.1 (a fascinating list of property that includes, among other things, "[d]omestic and farm animals with their necessary food for sixty days, farm machinery, one tractor and one lawn tractor, not exceeding in aggregate value twenty thousand dollars).

9 *E.g.*, Fla. Stat. §732.401; see also, Fla. Const. §4(c), art. X.

10 N.J.S.A. §25:1–5(h).

11 *Blumenthal v. Brewer*, 69 N.E.3d 834 (2016), following, *Hewitt v. Hewitt*, 77 Ill.2d 49 (1979).

12 N.Y. CPLR §4519; 42 Pa. C.S. §5930. Note the exception to Pennsylvania's Dead Man's Rule allowing testimony about documents created prior to death which support or otherwise relate to the claimant's claim. Larkin v. Metz, 580 A.2d 1150 (Pa. Super. 1990); *Freil Estate*, 16 Fiduc. Rep. 182 (O.C. Montg. 1966).

13 *E.g.*, N.J.S.A. §§3B:5-3 and 3B:5-4; N.Y. EPTL 4-1.1.

14 *E.g.*, N.Y. Bank. L. §678.

15 See, generally, Internal Revenue Code (IRC) §§2035 through 2040 and 2042.

16 See, generally, IRC §§2041.

17 Rev. Proc. 2022-38, §3.41, 2022-45 IRB 445, 453.

18 IRC §2631(c).

19 A couple who has entered into a civil union or similar arrangement under state law is not married for federal estate tax purposes and does not receive the benefits available to married persons. Rev. Rul. 2013-17, 2013-2 C.B. 201, amplified for other purposes by, Notice 2014-37, 2014-1 C.B. 1100, amplified for other purposes by, Notice 2015-86, 2015-2 C.B. 887.

20 IRC §§ 2010(c)(2)(B), 2010(c)(4) and 2010(c)(5).

21 O'Brien v. O'Brien, 66 N.Y.2d 576 (1985), superseded by, NY Dom. Rel. L. §236, Part B, 5.d.(7).

22 *Estate of Sommers v. Comm'r*, 149 T.C. 209 (2017), citing, S. Rept. No. 97-144, at 127 (1981), 1981-2 C.B. 412, 461.

23 *E.g.*, 72. P.S. §9116.

24 See, generally, American Bar Association, Model Rules of Professional Conduct, Rule 1.7 and the Comments thereto. Many states and territories have adopted the ABA Model Rules (with state specific alterations). To see if your state has adopted the ABA Model Rules see, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_ adopting_model_rules/ (last accessed November 20, 2022).

25 *E.g.*, Cal. Fam. Code §721.

26 *Christian v. Christian*, 42 N.Y.2d 63, 72 (1977) (citations omitted).

27 Ohio Rev. Code Ann. § 3103.06.

28 *Blumenthal v. Brewer*, 69 N.E.3d 834 (2016), following, *Hewitt v. Hewitt*, 77 Ill.2d 49 (1979).

29 *E.g.*, N.Y. EPTL §5-1.1A(e); 20 Pa.C.S. §2207 (with application of 33 P.S. §6).

30 *E.g.*, N.Y. Bank. L. §678.

31 IRC §401(a)(11); Treas. Reg. §1.401(a)-20.

32 Treas. Reg. §1.401(a)-20, Q&A 28 and Q&A 33.

33 IRC §101.

34 IRC §2042.

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