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Many of our clients in second marriages have mentioned a concern about protecting a share of the family assets for the children of each spouse. In the common situation, where assets are owned jointly and/or your Wills specify that the survivor would get the entire estate, there is no guarantee that the survivor wouldn't change his or her Will and alter the overall estate plan after the death of the first spouse. Sometimes a husband's and wife's Wills may specify that after both spouses have died, 50 percent will go to the husband's children and the other 50 percent will go to the wife's children. However, if the husband were to die first, the wife would have the right and the authority to change her Will in any way she wants, even cutting out the husband's children completely. Similarly, if the wife were to die first, the husband could cut out the wife's children or make any other changes he might want.

It doesn't have to be this way, and you could change your Wills (or your Revocable Living Trust) to guarantee an inheritance to the children of each of you. Instead of leaving your half of the assets to your spouse, one option is to leave your half directly to your children. Of course that might pose problems because the children would then typically own one-half of the house along with the survivor, and a division of other assets would have to be made as well.

Another alternative is for the first spouse to die to leave his or her portion of the assets to an irrevocable trust, more commonly known as a Family Trust. The survivor could be trustee and manage the assets in the trust and the survivor would also be entitled to possession of (e.g. a house) and income from (e.g. investments) all of the trust assets. However, when the survivor dies, assets in the trust (the half of the assets which came from the first spouse to die) must go to the children (or other beneficiaries) of the first spouse to die. The other half of the assets which were not in the Family Trust and were still owned separately by the surviving spouse would then go to the beneficiaries of the surviving spouse.

Using a Family Trust does complicate things somewhat because accounts have to be titled separately, a Tax Identification Number needs to be assigned to the Family Trust, and a Fiduciary Income Tax Return needs to be filed each year. However, no additional income taxes will need to be paid because all of the income will pass through the Family Trust and be reported by and taxable to the surviving spouse. The Family Trust is also very useful in larger estates (over \$1,500,000) to minimize or eliminate Federal Estate Taxes.

If you would like to discuss any of these techniques, please telephone your attorney or schedule an appointment to come into the office.