

## Outline:

### Protecting Children's Inheritance in Divorce and Remarriage:

- I. Introduction  
The Concept --- Working jointly with estate lawyers and other collaborative lawyers to address an issue generally not seriously addressed in divorce
- II. The Problem  
Describing how disinheritance problem arises for stepchildren and children of the first marriage, as well as preventative steps that could be taken by a parent
  - a. upon divorce
  - b. before a parent's remarriage
  - c. after remarriage
- III. Protecting inheritance during divorce.
  - a. Introduction of Fact patterns to be used throughout the program – see below
  - b. Separation Agreement terms
    - i. Protecting inheritance strategies
      1. Terms in agreement
      2. Life insurance
      3. Trusts
    - b. Role Play Negotiation
  - c. Procedural alternatives: Utilizing Collaboration or Mediation to achieve agreements, and including estate lawyers in the discussion
- IV. Protecting inheritance before or after remarriage
  - a. Prenuptial Agreements
    - i. The state of the law regarding prenuptial agreements and enforceability – a state by state issue
    - ii. Possible strategies for negotiating terms
    - iii. Challenges generally present in prenuptial agreements
      1. Disparity in financial condition
      2. Presence of children on one side only, whether the monied side or the non-monied side
      3. Timing – they almost never start soon enough
      4. Nature of relationship between the adults and their anticipated step children, existing children and possible future children

- iv. Role Play negotiation
  - b. Post-nuptial agreements
    - i. The state of the law regarding post-nuptial agreements and enforceability - a state by state issue
    - ii. Possible strategies for negotiating terms
    - iii. Challenges generally present in post-nuptial agreements
      - 1. Disparities in knowledge/control over family finances
      - 2. Changing finances over time – the effect of possible disability or possible loss of earnings or health on the plan
      - 3. Changing relationships between adults, their children and their step-children, and between the step-children.
    - iv. Role play negotiations
- V. Provisions to consider
- a. Waiving elective share rights
  - b. Terms of separation agreements
  - c. Terms of prenuptials
  - d. Terms of post-nuptials
- VI. Interaction between Divorce Lawyers or Collaborative Lawyers and Trusts/Estates Lawyers
- a. Getting cases off the ground
  - b. Keeping straight who is doing what
  - c. Keeping price down while making sure each side has adequate representation and feels that they fully understand the plan and the documents prepared to implement the plan.
- VII. Questions and Answers