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Remarried? Here's How To Take Care Of Your Kids From Before



Larry Light Contributor 

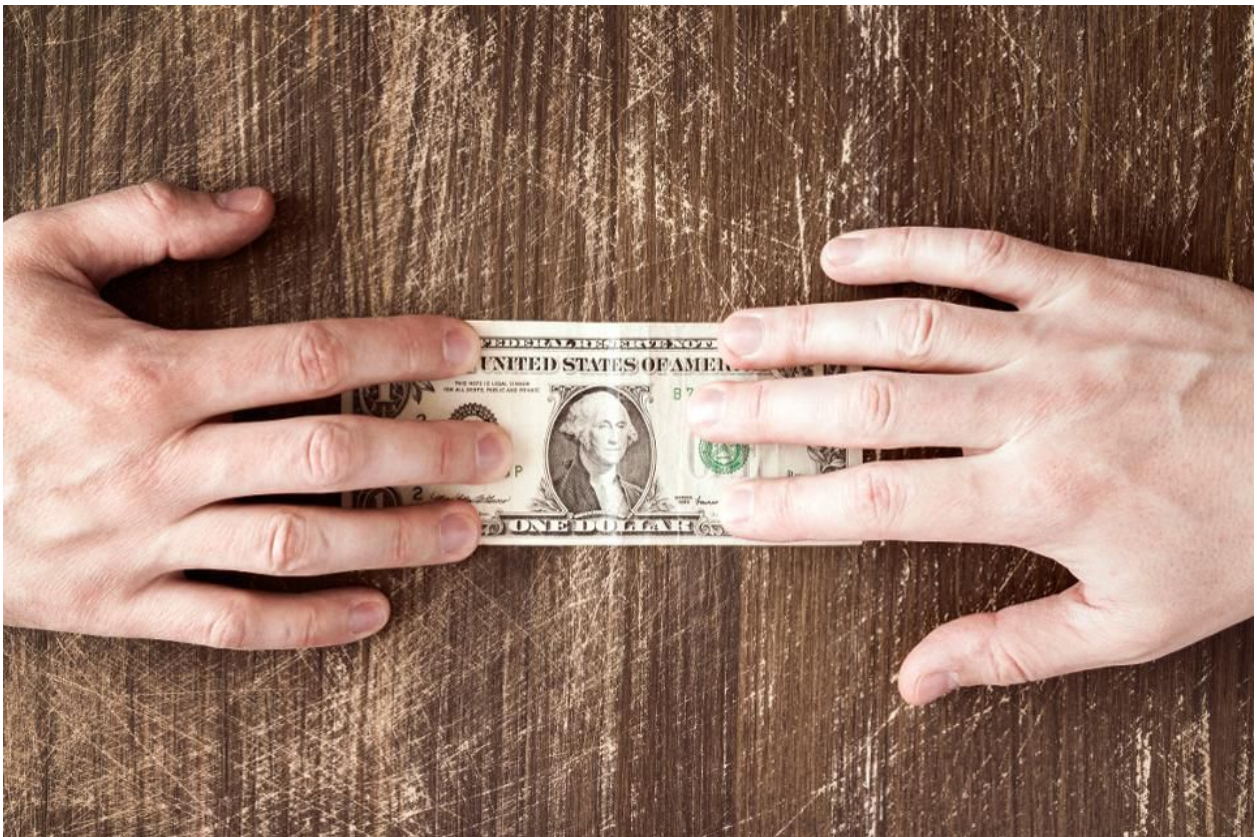
Investing

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AN INTERVIEW WITH

Bruce Bell

Bruce Bell is an attorney at the Chicago office of [Schoenberg, Finkel, Newman and Rosenberg](#)



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Say you want your 401(k) benefits paid to your children from your first marriage, not to your second spouse, much as you love him or her. Some legal hurdles are in the way. Bruce Bell, an attorney at the Chicago office of Schoenberg, Finkel, Newman and Rosenberg, tells us how to surmount them:

Larry Light: So you are planning to remarry and, after you die, you want your 401(k) plan benefits paid to your kids, who you had with your first wife, and not to your future spouse. What's the procedure?

Bruce Bell: There are tax code requirements to meet so that the 401(k), or other qualified plan benefits, can be paid to someone other than your second spouse.

First, your new spouse must waive the right to receive your plan benefits, in writing. This written consent must be witnessed by an appropriate representative of the plan or by a notary public. Fail to meet these requirements, and your 401(k) plan benefits will be paid to your current spouse upon your death. And that's even if you've told the 401(k) sponsor to designate a non-spouse beneficiary, like your kids from the first marriage.

Light: What about using a prenuptial agreement to accomplish this?

Bell: That won't work. Prenuptial agreements are a creature of state law, not federal law. They codify a couple's agreement regarding financial and other matters. A prenuptial agreement addresses one spouse's rights to the other spouse property and income upon death or divorce. Courts have generally ruled that a prenuptial agreement executed prior to marriage will not satisfy the specific requirements for waiving a spouse's rights to retirement plan benefits upon the other's death.

Light: Any other tips?

Bell: You should consider transferring your 401(k) plan funds to an individual retirement account. Under federal law, IRAs are not required to be paid to a surviving spouse upon the deceased IRA owner's death.

If you leave your job, be sure to transfer your 401(k) plan funds to an IRA. You do not want to transfer these funds to your new employer's plan, as you will then be subject to the same spousal consent requirements.

Light: Can age factor into this?

Bell: Yes. Let's say you stay with your old employer and have reached 59½. Your plan may permit you to withdraw the funds in your 401(k) plan. Then you transfer that to an IRA.

Light: Do state laws enter into this at all?

Bell: Federal law notwithstanding, some states require IRAs to be paid to a surviving spouse. Even so, just get that spouse to waive rights.



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