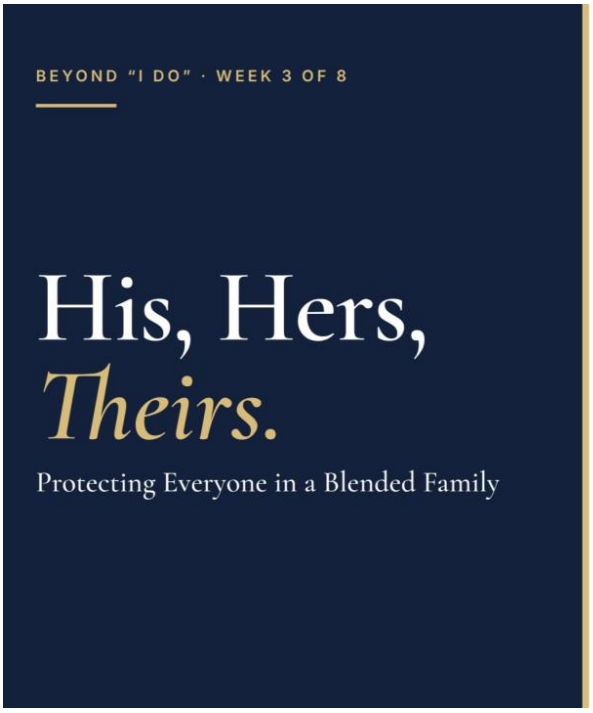
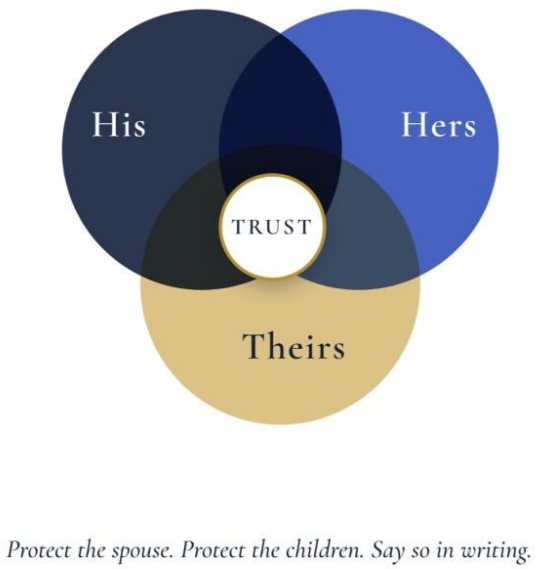




Written by Akshaya Senthil Kumar

Last week, a beneficiary form paid the wrong husband. This week, a family plans so that no one is paid by accident.

Meet Daniel and Priya, a couple who remarried at 58. He has two daughters. She has a son. They share one home, two retirement accounts, and one very polite silence about what happens when either of them dies.

A trust is a promise with a manager. A trustee holds the property and follows written instructions about three things: who benefits now, who benefits later, and who decides. For a blended family, those three answers are the whole plan.

Daniel has three basic options.

Option 1: Everything to Priya, outright.

Simple, and it protects her completely. It also gives her the final word. His daughters inherit only if Priya chooses to leave them the property, and only if her own plan, her own advisers, and any later spouse cooperate.

Option 2: Everything to his daughters.

It protects the daughters completely, and it can leave Priya without the home she lives in. In New York, she could elect against that plan and claim the greater of $50,000 or one-third of

his net estate, unless she validly waived that right in a signed, acknowledged writing (EPTL 5-1.1-A).

Option 3: A trust for Priya, with the remainder to his daughters.

Priya receives the income, the right to live in the house, and principal for her health and support. When she dies, whatever remains passes to his daughters, as Daniel directed. If the trust qualifies, a QTIP election defers federal estate tax until Priya's death, when what remains is included in her estate (I.R.C. §§ 2056(b)(7), 2044). New York's estate tax, which begins at a far lower threshold, needs separate planning. An independent trustee manages the property, so neither side is left to judge its own interest.

One caution on the home: if Daniel and Priya hold it jointly with the right of survivorship, it passes to the survivor outright, whatever the trust says. The title has to match the plan.

The daughters' remainder is a real property right, and unwinding it has a price. In *McDougall v. Commissioner*, 163 T.C. No. 5 (2024), a surviving spouse and the children agreed to end a QTIP trust early, when it was worth more than $100 million. The U.S. Tax Court held that the spouse made no taxable gift, but the children did, because they gave up their remainder interests without receiving anything of value in return.

Priya builds the mirror image for her son. His, hers, theirs: each side of the family keeps its own trust, and the home shelters whoever survives.

What I tell clients and colleagues

- Remarrying with children from a prior marriage? Have you decided, in writing, who is protected now, who is protected later, and who decides?
- Want the survivor housed and the children assured? Have you considered a QTIP trust with a right to occupy the home and an independent trustee?
- Building a trust for a spouse? Will the spouse sign a written, acknowledged waiver of the right of election? Without one, the spouse can still claim the elective share.
- Own the home jointly? Does the title match the plan?
- Naming a trust or the children on a 401(k)? Has the spouse given written, witnessed consent? Federal law often requires it (29 U.S.C. § 1055).

Who would you trust to serve as trustee in a family that includes both your spouse and your children?

Akshaya Senthil Kumar, Attorney
akumar@mpl-law.com
717-845-1524