



## Estate Planning for Modern Families: Planning for Diversity and Flexibility

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### Speaker Biography – Wendy Goffe



Wendy S. Goffe is a partner with the law firm of Stoel Rives LLP, Seattle, Washington with more than twenty-five years of experience counseling clients on estate planning issues. She is a fellow of the American College of Trust and Estate Counsel (ACTEC) and a member of the ACTEC Digital Property Committee. Her experience includes advising clients on matters including probate and trust administration, estate and gift taxation, charitable giving and nonprofit trusts and corporations, family-owned business succession and issues concerning unmarried couples.

Wendy is the co-editor of *The Tools & Techniques of Estate Planning for Modern Families*, Leimberg Library, 3d ed., The National Underwriter Company (2019), and the author of the following chapters: "Planning for Unmarried Couples and Cohabitation Agreements," "Planning for Same-Sex Couples," "Advising and Planning for Transgender Family Members," and "Planning for Pets."

She has also been interviewed by and written for many national publications, and was previously a contributor to *Forbes.com*. She is a current member of the Seattle Foundation Professional Advisory Council, the Seattle Public Library Professional Advisory Committee, and the Children's Legacy Council of the Children's Hospital Foundation.

She is also a former Adjunct Instructor at Seattle University Law School, as well as a former member of the ABA Taxation Section Community Property Comment Project, the Executive Committee of the Estate Planning Council of Seattle, the Acquisition Committee of the Tacoma Art Museum, the Executive Committee of the WSBA Real Property, Probate and Trust Section, the YWCA Planned Giving Advisory Committee, The Nature Conservancy Planned Giving Committee, the Ethics Committee of Valley Medical Center and the Board of Directors and Grants Committee of The Women's Endowment Foundation, a supporting organization of the Jewish Community Endowment Fund, Seattle, Washington.

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## Speaker Biography – Kim Kamin



Kim Kamin is a Principal and the Chief Wealth Strategist at Gresham Partners LLC, an independent multi-family office serving about 110 ultra-high net worth families nationally. Kim leads Gresham's development and implementation of estate, wealth transfer, philanthropic, educational and fiduciary planning activities. Previously she was a partner in the Private Clients group at a large law firm.

Kim is an adjunct professor at the Northwestern University Law School and is on faculty for the Certified Private Wealth Advisor® (CPWA®) program through the University of Chicago Booth School of Business Executive Education.

Kim is a Regent for the American College of Trust and Estate Counsel (ACTEC), is Immediate Past President of the Chicago Estate Planning Council (CEPC) and on the Leaders Council for the UHNW Institute. Additionally, Kim serves on advisory boards for multiple local charities.

Kim serves on the Editorial Advisory Board of *Trusts & Estates Magazine*, has published on a wide variety of topics, and is also a frequent lecturer in a variety of venues across the country. She was co-executive editor and co-author for the past two editions of the Leimberg Library Tools & Techniques book, *Estate Planning for Modern Families*.

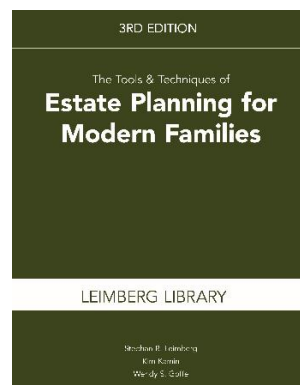
Kim received her B.A., *with distinction and departmental honors*, from Stanford University and her J.D. from the University of Chicago Law School. She is an AEP® and a 21/64 Certified Advisor.

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## INTRODUCTION



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## Introduction

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### ❖ Traditional Nuclear Family



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## Introduction (cont.)

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- ❖ Changing Influences on Traditional Family
  - **Evolving Social Norms**
  - Legal Developments
  - Scientific/Technological Advancements

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## Introduction (cont.)

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- ❖ Changing Influences on Traditional Family
  - Evolving Social Norms
  - **Legal Developments**
  - Scientific/Technological Advancements

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## Introduction (cont.)

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- ❖ Changing Influences on Traditional Family
  - Evolving Social Norms
  - Legal Developments
  - **Scientific/Technological Advancements**

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## Introduction (cont.)

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- ❖ Modern Family (*Modern Family*, 2009-2020)

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## Introduction (cont.)

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- ❖ Modern Family (*The Fosters*, 2013-2018)

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## Introduction (cont.)


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- ❖ Modern Family (*Jane the Virgin*, 2014-2019)

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## OVERVIEW

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- ❖ Marital Status
- ❖ Defining Descendants
- ❖ Diversity/DEI
- ❖ Planning with Flexibility

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## MARITAL STATUS



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## Marital Status – Overview

- ❖ Divorce
- ❖ Going Solo
- ❖ Unmarried Couples
- ❖ Same Sex Married Couples
- ❖ Remarriage & Blended Families
- ❖ Polyamorous Relationships
- ❖ Multinational Families

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## Marital Status – Divorce

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## Marital Status - Divorce

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- ❖ Changes in Divorce Rates
- ❖ Trends in Types of Divorce
- ❖ Alternatives to divorce
- ❖ Drafting Considerations

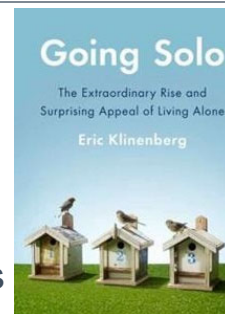
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## Marital Status – Going Solo

- ❖ Single Clients
  - Testamentary Wishes
  - Pet Trusts
- ❖ Single Parents by Choice
  - Temporary Standby Guardians
  - Permanent Successor Guardians
  - Life Insurance
  - Agents and Trustees



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## Marital Status – Unmarried Couples

- ❖ Legal status
- ❖ Support obligations
- ❖ Gifting concerns
- ❖ Planning opportunities
- ❖ Cohabitation Agreements
  - Expenses while cohabiting?
  - Continuing obligations?
  - Alternatives to cohabitation agreements?

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## Marital Status – Same Sex Married Couples

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- ❖ State discrimination
- ❖ International travel
- ❖ Tribal Lands
- ❖ Proof of relationships and authority

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## Marital Status – Blended Families

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- ❖ Remarriage
- ❖ Potential Conflicts
  - New spouse vs. prior children
  - New children vs. prior children
  - Step-children

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## Marital Status – Polyamory



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## Marital Status – Polyamory

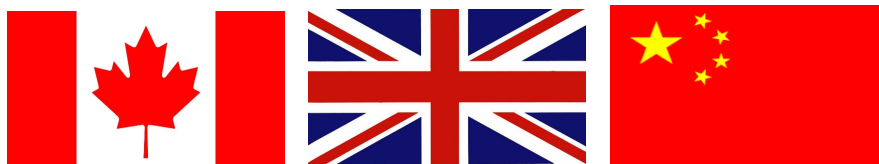
- ❖ Polyamory defined
- ❖ Polyamory as alternative to divorce
- ❖ Providing for surviving spouse
- ❖ Providing for other partner(s)

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## Marital Status – Non-Citizen Spouses

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## DEFINING DESCENDANTS

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## Defining Descendants – Overview

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- ❖ Stepchildren
- ❖ Adoption
- ❖ Nonmarital children
- ❖ Assisted Reproductive Technologies
- ❖ Cryonics and Cloning

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## Defining Descendants - Stepchildren

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## Defining Descendants – Adoption

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## Defining Descendants - Adoption

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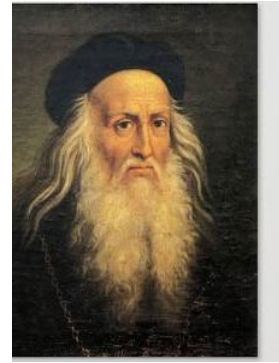
- ❖ Old Rules
  - Class Gifts Exclusion
  - “Stranger to the Adoption”
- ❖ Types of Adoption
  - Minors
  - Adults

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## Defining Descendants – Nonmarital Children

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## Defining Descendants – Nonmarital Children

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- ❖ Rely on state law?
- ❖ Provide definitions in document
- ❖ Cultural views regarding unmarried parents
- ❖ Establishing maternity (typically gestation)
- ❖ Establishing paternity
  - DNA test
  - Acknowledgment test
  - Functioned-as-parent test
  - Hybrid

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## Assisted Reproduction & Posthumous Descendants


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## Assisted Reproductive Technologies

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- ❖ Artificial insemination
- ❖ In-vitro fertilization
- ❖ Posthumous Reproduction
  - Reasons?
  - State law defaults?
  - Governing instrument definitions?
  - Time limits?
- ❖ Surrogacy

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# Cryonics and Cloning




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# PLANNING FOR DIVERSITY



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## Planning for Diversity – Overview

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- ❖ LGBTQIA+
- ❖ Racial and Cultural Diversity
- ❖ Religious Diversity
- ❖ Disability/Differently Abled Planning

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## LGBTQIA+

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## LGBTQIA+ (cont.)

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- ❖ Transgender and non-binary family members
- ❖ Nouns, pronouns and honorifics
- ❖ Distributions for “health”

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## Racial and Cultural Diversity

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## Religious Diversity



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## Supplemental Needs Planning



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## Supplemental Needs Planning (cont.)

- ❖ ACA and Medicaid Planning
- ❖ Third Party Trusts
  - “to supplement, but not supplant”
- ❖ Self-Settled Trusts
  - Pay-Back Trusts under d(4)(a)
  - Pooled Trusts under d(4)(c)
- ❖ ABLE Accounts

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## DRAFTING FOR FLEXIBILITY



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## Drafting for Flexibility – Distribution Standards

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- ❖ Distribution Standards = Best Interests/Sole Discretion
  - Spray Trusts (indicate Primary Beneficiary)
  - Beneficiary trustee limited to HEMS
  - Side letter of wishes for settlor intent

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## Drafting for Flexibility – Trustees

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- ❖ Ability to Replace Trustees and Alter Succession
  - Could be a Trust Protector power
  - Can be given to beneficiaries (with limitations)
  - Enable future generations to serve

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## Drafting for Flexibility – Divided Trusteeships

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- ❖ Administrative Trustee
- ❖ Distribution Trustee or Advisor
- ❖ Investment Trustee or Advisor
- ❖ Special Trustees for particular assets

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## Drafting for Flexibility – Powers of Appointment

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- ❖ Broad special powers
- ❖ Lifetime powers to appoint to new trust for same beneficiaries
- ❖ Broad special testamentary powers exercisable by separate instrument (not will)

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## Drafting for Flexibility – Amendment

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- ❖ Trust Protectors
  - Surgeon vs. Policeman
- ❖ Contemplate and Bless Decanting
  - Common law or Statutory decanting
  - Consider waiving notice provisions

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## Drafting for Flexibility – Grantor Trust Provisions

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- ❖ Belt and suspenders approach
- ❖ Include swap powers
- ❖ Ability to toggle on and off
- ❖ Grantor reimbursement provisions

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## Drafting for Flexibility – Situs and GPAs

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- ❖ Change of Situs and Governing Law
  - By Independent Trustee or Trust Protector
- ❖ Power to Grant/Eliminate GPAs
  - By Independent Trustee or Trust Protector
  - Relieve of duty to consider granting power unless specifically proposed by a beneficiary

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## Drafting for Flexibility – Privacy

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- ❖ Protect Family Privacy
  - Limit information included in instruments
  - Keep pourover wills short and generic
  - Exercise testamentary powers of appointment in rev trusts or other instruments

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## Drafting for Flexibility – Funding Formulas

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- ❖ Consider Portability
- ❖ Consider Disclaimers
- ❖ Consider Clayton Elections

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## Drafting for Flexibility – Definitions

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- ❖ Digital Assets
- ❖ Consider Other Important Definitions
  - Defining Descendants
  - Defining Spouses or Similar Relationships
- ❖ Sensitivity to Client Preferences
  - Gender
  - Adoption
  - ART

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## Q & A

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