



SECOND MARRIAGES

Marriage revokes a will, unless the will specifically says it was made in contemplation of the marriage. If you have not made a will since you re-married, you need to make a new one immediately. Otherwise, your estate will be distributed according to the *Succession Law Reform Act*, which says that \$200,000.00 goes to your spouse, and the remainder, if any, is divided among your spouse and your issue.

If you change your marital status, it is a good idea to review more than your will. Who is the designated beneficiary on your RRSPs or RRIFs, and in your Pension Plan? It may not be your current spouse. Your Powers of Attorney may also need to be revised.

Any property owned jointly with your spouse becomes his or hers absolutely on your death. Since the will only covers what is part of your estate, it won't matter that your will leaves property to your children -- it has already passed to your spouse! Couples in second marriages should consider holding property as tenants-in-common, so their wills determine what happens to the property.

You may plan to leave everything to a second spouse in your will, and he or she may leave something to your children. You trust your spouse, and often there is a good relationship between children and a step-parent. But families can drift apart after a death. If your spouse remarries, his or her will is revoked. If your spouse is incompetent, a family member acting under a Power of Attorney may not be able to give away property without breaching their duty.

If you leave everything to your children in your will, however, your spouse may elect a division of property like the division on divorce. Your spouse, or someone acting for him or her, may also claim against the estate for support. Life insurance and registered plans like RRSPs and RRIFs can compensate a spouse who is not named in a will, and prevent an election against the will. A marriage contract can also help ensure that a will is not challenged.

A testamentary trust can allow your spouse to use and enjoy your property while he or she lives, but ensure that the value passes to your children eventually. The trust can also save taxes on the estate. If you use a trust, consider making a small gift to your children immediately on your death.

Choosing the right Executor is especially important when you are planning your estate after a re-marriage, particularly if you set up a trust for your spouse. You may need to find an impartial third party to be Executor, to avoid putting your children and spouse in conflict.

Cunningham Swan offers a broad range of legal services to individual and corporate clients in the private and public sectors in Kingston and Southeastern Ontario. We welcome your inquiry: Cunningham Swan Carty Little & Bonham LLP, 1473 John Couter Blvd., City Place II, Suite 201, Kingston, ON, K7M 8Z6; Telephone: 613.544.0211; Facsimile: 613.542.9814; Email: info@cswan.com. This factsheet does not constitute legal advice.