



Fleury, Comery LLP
Barristers & Solicitors

A SECOND MARRIAGE: SOME THINGS TO CONSIDER

The following information and issues should at least be considered by people who are entering a second marriage later in life, especially where one or both of the parties has grown children.

ESTATE CONSIDERATIONS

Generally, a Will is revoked by marriage. If one of the spouses dies without a Will, the surviving spouse will receive a spousal preferential share of the deceased's estate (\$200,000.00 at this time) plus a large portion of the balance of the estate.

There are of course potential claims of the new spouses against each other's estates under the provisions of the *Family Law Act* (FLA) and/or the *Succession Law Reform Act* (SLRA). Under the FLA, a surviving spouse can elect for a property equalization if the Will does not provide a satisfactory legacy. The SLRA provides for dependent's relief if the surviving spouse's support needs are not adequately covered by the estate.

If the spouses leave all of their estate to each other, there is nothing stopping the surviving spouse from then changing his/her own Will to benefit only his/her heirs. One way to alleviate this kind of disappointment of expectations of the children of one of the spouses is to provide in the deceased's Will for a life estate to the surviving spouse rather than an outright gift of the deceased's assets.

A POTENTIAL UNEXPECTED RESULT

Ontario law requires equalization of net family property on marital breakdown (or, if elected by the surviving spouse, on death). The net family property of each spouse is added up, and then the wealthier spouse pays over to the other one-half of the difference so as to result in an equalization.

In the calculation of net family property one is allowed to deduct the value of assets brought into the marriage - with the exception of a matrimonial home. This last exception can result in quite a surprise for the spouse who brought into the marriage a house, or cottage, or both, that qualifies as a "matrimonial home" on the date of marital breakdown or death. To avoid this issue we recommend that the new couple acquire a new residence but, better still, that the couple enter a marriage contract as discussed below.

A MARRIAGE CONTRACT

The best way to avoid unexpected results on death or marital breakdown of a second marriage is for the parties to enter a marriage contract. One of the major benefits of a marriage contract is to establish and confirm that each party is aware of the assets being brought into the marriage by the other. The contract can confirm the expectations of the parties with regard to the new marital partnership, whether it is to be a pooling of subsequent income resources or whether they intend to maintain separate finances throughout the marriage.

We strongly urge our clients who are going to be entering a second marriage to enter into a marriage contract.

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