

A dear friend went through a divorce a few years ago, after more than two decades of marriage, and several children. At the time their marriage was unravelling, I was taking a work-related course about estate planning and its implications on family law. The daily updates from my heartbroken friend enhanced my study focus better than any adult-ADD medication ever could.

I cringed when they decided save on the cost of lawyers by handling it themselves using some sort of on-line resource. To their credit, they both for the most part maintained dignity, but there were a few decisions I know they would like to take back. I won't get in to them here, but it was pretty basic stuff that could have easily been avoided, and would have saved them from the repeatedly salted wounds that resulted.

In fact, although both are remarried now, and have been for a few years, some of their divorce-period decisions are still haunting them. In short, the result has been a regular revisiting of old pains – unavoidable as a result of the matters they chose to handle amateurishly, even with the most honest of intentions. This seeps regularly into their new lives, and infringes on the new marriages like a bad smelling shirt on a hot day.

Estate Planning for Blended Families:

The raw emotions that bubble beneath the surface of even the best family relationships can be a recipe for added volatility in blended families – to say the least. Add the measures of acrimony that come with alimony, and the pinch of the ugly acidity that comes with uneven assets, and it gets really interesting. Next, fold the contents until they form a lumpy paste, and then stir in lawyers.

Honestly, that recipe is upside down. The lawyers need to go in earlier -- but not until you've studied your intentions, and done a little financial planning.

The difficult decisions often come in finding the right balance between protecting your own children and sufficiently providing for your current spouse. Leaving the decision up to either your spouse or your children as to how to divide your assets after your death leaves the door wide open for conflict and hard feelings, regardless of how good the relationships may be.

Communicate upfront. Be open with everyone who has a stake in the planning and discuss everyone's needs and wishes. It's best to have these awkward conversations upfront and avoid assumptions.

With these considerations in mind, what else do you need to know even before you get married again?

New Wills

In BC, a re-marriage does not cancel the will you made with your previous spouse. Therefore, if you have re-married or plan to remarry, a new Will should be a priority, regardless of how you want to divide up your estate.

It is essential to review and update beneficiary designations on registered plans and insurance policies, as marriage does not necessarily revoke prior designations made on the plan documentation or policy, such as a designation in favour of a former spouse. This is huge. If you don't deliberately do these things, nobody is going to do them for you.

Restrictions on testamentary freedom

There is a deeply entrenched common-law principle of testamentary freedom, which means a person of sound mind can dispose of their property as they choose. Judges rarely like to mess with this, but they sometimes do. Testamentary freedom may be curtailed by, among other things:

- The rights afforded to spouses and other dependants under provincial legislation;
- The contractual obligations of the deceased;
- Will or estate plans: Under BC law you become a spouse when you live with someone (same or opposite sex) in a marriage-like relationship for at least two years. BC law doesn't use the term

common-law partner. Consequently, couples entering new common-law relationships should also seek legal advice in revising and preparing their estate plans.

- An existing support agreement from a previous relationship. A person may be required under a court order or domestic contract to pay support to a former spouse or child.
- In BC, a surviving spouse and/or children may apply for the division of property if the Will doesn't provide a fair and reasonable distribution of assets among them.

We will discuss this more next week.

Mark Ryan is an Investment Advisor with RBC Dominion Securities Inc. (Member–Canadian Investor Protection Fund), and these are Mark's views, and not those of RBC Dominion Securities. This article is for information purposes only. Please consult with a professional advisor before taking any action based on information in this article. Mark can be reached at mark.ryan@rbc.com.