

Blended Families: Who Gets What?



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With the rise in divorce and remarriage, many family units involve children from prior relationships and multiple sets of parents. In many such families, the challenge is to make fair provision for the second spouse while also leaving something for the children of the prior relationship and/or the current relationship. The law imposes different obligations for the division of assets depending on whether the spouses are living common law or are legally married.

The law also requires that we make fair provision for our “dependents”. Many couples are surprised when they find out that the plan they designed may not be upheld after one or the other of them dies.

The following fact situation illustrates just a few of the issues and planning considerations that couples in blended families must deal with.

The Situation

Jim, a divorcee, and Carol, a widow, married two years ago.

Jim has two children from his first marriage. Both are financially independent adults. Jim is paying spousal support to his ex-wife pursuant to a Separation Agreement.

Carol has three adult children from her first marriage. Two are married and financially independent. The third child, Martha, has special needs and lives with Jim and Carol.

Carol’s children are civil to Jim, but their relations are strained; they suspect that Jim is a “gold-digger” as Carol had significantly more assets than Jim when they married.

Jim and Carol each have wills they made before their marriage.

Prior Wills

On Jim and Carol’s marriage, their prior wills would automatically be revoked, unless the pre-existing wills state otherwise. If either of them dies before new wills are completed, that spouse would die without a will (“intestate”) and that spouse’s estate would be distributed in accordance with the rules for intestate succession, not the terms of the prior will.

New Wills

A will is not a contract: either Jim or Carol can change their respective wills at any time. If they want a particular plan to remain in effect, they may need more than a will; i.e. a trust, a mutual will agreement or a marriage contract. There are pros and cons to each option.

Legally Married Spouses and Property

Under the Family Law Act (FLA) of Ontario, a legally married spouse is entitled to an “Equalization of Net Family Property” on dissolution of the marriage or on the death of the other partner. This right to equalize Net Family Property does not presently extend to common law spouses. If Jim’s or Carol’s plan does not leave the surviving spouse an amount equal to or greater than the entitlement under the FLA, the surviving spouse may make a claim against the estate of the deceased spouse for the value that he or she is entitled to under the Family Law Act.

Dependants

In Ontario, each of us has a legal obligation to make adequate provision for our dependants. If adequate provision has not been made, the dependant can make a claim against the estate. Each spouse and child may be a dependant of the other. Carol’s adult daughter, Martha, may also be a dependant because she has

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