

Second thoughts: succession issues arising from second marriages



An increasing number of marriages in England and Wales take place between couples who were previously divorced or widowed. Here we outline some of the legal issues that can arise in relation to second marriages.

Existing wills may no longer be valid

Marriage automatically revokes a Will, unless it was made specifically in contemplation of that marriage. It is possible to revive your Will after marriage by signing a short document called a Codicil.

If you re-marry and do not revive your existing Will or put in place a new one, the intestacy rules will apply and you will have no control over who inherits your estate.

Awareness is key: you need to take action, either beforehand by making a Will in contemplation of the marriage, or afterwards by making a new Will or reviving your old one.

New will structure is likely to be necessary

How will you balance providing for your new spouse and ensuring that any children from previous relationships are looked after? A dispute between family members could quickly deplete the value of your estate, so it is important to consider how you can minimise the chance of beneficiaries feeling disgruntled on your death and perhaps bringing a claim against your estate.

Mirror Wills leaving everything to the survivor outright are unlikely to be appropriate. They offer little protection



for the family of the first to die because there is nothing to stop the surviving spouse from changing their Will and re-directing all the assets to their side of the family. Assets received outright by a spouse could also be spent during their lifetime or depleted by care home fees, leaving little for the beneficiaries of the first to die.

There are various alternative Will structures to consider, including a life interest trust which allows the survivor to benefit from the assets during their lifetime but passes the capital to the family of the first to die on the second death. You should take specialist advice so that you can choose the right option for your situation taking into account the tax implications and your family circumstances.

The marital home may not pass as you intend

In order for jointly owned property to pass under your Will, it needs to be held as 'tenants in common' (rather than 'joint tenants'). Assets held as joint tenants will pass automatically by survivorship to the co-owner, which may not reflect your wishes.

If one spouse contributed more to the purchase of the marital home, a declaration of trust is essential to record the correct ownership percentages so that their beneficiaries will not miss out.

Make the most of legitimate tax planning opportunities

Each individual has an allowance for inheritance tax i.e. an amount which they can pass to relatives, friends or other beneficiaries free of inheritance tax. When a spouse dies all their estate can pass to the surviving spouse tax free anyway, and in that case the allowance is not used but is not lost. This means that if you have been widowed, your estate will benefit from your first spouse's unused inheritance tax allowances. Planning measures can be put in place in your Will to ensure that any additional allowances are captured in the most tax efficient way for your beneficiaries.

A new relationship brings happiness but it is also vital that you take legal advice to make sure that all your loved ones, old and new, are left in the best situation they can be when you are gone.



[Francesca Sassoli](#)

Senior Associate