

WILL WARS

Don't assume goodwill when it comes to an inheritance

By Irene Seiberling
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Poor planning when Dad or Mom marries for a second or third time can result in a nightmare for children from a previous marriage.



Toronto wills and estates lawyer Les Kotzer offers tips to help avoid inheritance nightmares.

Just ask Toronto wills and estates lawyer Les Kotzer. He's dealt with situations that would make your head spin.

How can you protect your kids if you're in a blended marriage? For one thing, don't assume goodwill between your second spouse and your children from a previous relationship, Kotzer cautions. "Don't assume they will work it out."

Grandparents beware, as well. What you assume will one day go to your children and grandchildren may not.

"I think a lot of people would be shocked how easily all that you've worked for can end up in a stranger's hands," he said.

Kotzer used an example from *The Wills Lawyers: Their Stories of Money, Inheritance, Greed, Family and Betrayal*, a book he co-wrote with law partner Barry Fish.

A grandfather, who had come to Canada from Europe with nothing, worked hard to amass significant wealth. He promised his only granddaughter that everything he had worked for would one day be hers. First, it would go to her mother (his only child), then be passed on to her.

Knowing that the fruits of his labour would stay in the family comforted them both.

But soon after the grandfather died, the mother died as well. Her inheritance — everything the grandfather had owned — went to her husband.

The granddaughter assumed that her father would abide by her grandfather and mother's wishes. But when he remarried, the father insisted he needed the money he'd inherited to support his new family, and he refused to give any to his daughter.

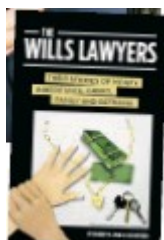
"It's my money now," he screamed at her. "I'll do with it what I want." Legally, he had that right. "People need to hear that story," Kotzer said. "Because that is a way that all of your work (is) going to a stranger."

Another recipe for disaster is when a couple in a second marriage agree to leave everything to each other, and after they die, their estate is to be split equally among the children from their respective marriages.

"Most people think that by doing that they have assured that their children will be protected," Kotzer said. "But, guess what, there is no contract there. If Dad dies, Stepmom can make a new will and totally cut out his kids after inheriting all his money and leave everything he left her to her own children. We've seen that a number of times.

"People are under the false assumption that if they make a will with their spouse, the spouse has to follow it. They don't. They can make a new will anytime and change everything they did and everything that they said, and make a new will leaving everything to their own children."

Another problem Kotzer runs into when preparing wills is clients in a common-law relationship who want to leave everything to their children from a previous marriage, but find out they can't. If everything the couple owns is in joint names, which is often done to avoid probate, it's not possible to leave any of it to someone else. So, in this case, regardless of what the will says, the children get nothing, because those assets are already spoken for. They go to the person named on those assets. "Those things override the will. And they speak louder than the will," Kotzer explained.



These things are "extremely important" to take into consideration, he emphasized. "When you're doing planning, if you don't plan properly, you could literally divest your family of everything you worked for."