The Importance of Redoing Your Will at Marriage

If a person dies without protecting his or her current spouse in his or her will, the law will protect the surviving spouse. There are two ways the surviving spouse is protected, 1) if there is a valid will that does not protect the surviving spouse he or she may exercise the spousal elective share (a statute allowing him or her to elect to take a specified portion of the probate estate), 2) if the is no will or the will is found invalid, the surviving spouse will receive an intestate share (statutory system for the division of property without a will).

The spousal elective share tries to protect the intended beneficiaries under the will and other family members, as well as spouse not provided for in the will. While the exact wishes of the deceased may not be met, it hopefully still provides some protection for those he or she intended to protect in the will, specifically it should protect specific bequests such as property and heirlooms if possible given the size of the estate. The surviving spouse will receive $25,000.00 outright and an interest in a portion of the remaining estate determined by what relatives, if any, are alive.

The real problem arises for other intended beneficiaries when there was an attempt to create a will that was found invalid. A will made prior to a marriage that does not clearly reflect that it was made in the anticipation of marriage is not considered valid if the spouse is not otherwise protected and will be treated as if it does not exist at all and the estate will be handled under the laws of intestacy. Under the laws of intestacy the person's assets are divided between his or her surviving spouse and certain relatives including children and grandchildren and parents. Surviving siblings, nieces, and nephews will receive nothing even if he or she was protected in the invalid will. This means that a family heirloom ring meant to go to the oldest granddaughter in each generation could end up in the hand of Uncle Bob's new girlfriend.