

# RRSPs and RRIFs ...

## No Designation and No Will

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It is important for individuals with RRSPs and RRIFs to consider either designating a beneficiary, or providing for distribution of these assets in their Will. While this decision may seem straightforward, something as simple as the definition of spouse can have major implications.

Under the *Income Tax Act*, 'spouse' includes a common-law partner ("CLP"), however, this definition applies only with respect to matters governed under this *Act*. The definition of spouse varies under other pieces of legislation, such as the laws of intestacy. Additionally, there is legislation under each jurisdiction regarding eligibility of certain individuals to receive locked-in registered plans upon death of the annuitant.

### RRSPs and RRIFs

If there has been no designation of beneficiary on the registered plan and there is no Will, the laws of intestacy for the jurisdiction where the deceased was resident will determine distribution of RRSPs and RRIFs.

Not all provincial laws of intestacy recognize CLPs. In the provinces recognizing common-law relationships, the requirements are varied.

Another consideration is if the deceased and spouse were living separate and apart, or if the surviving spouse is living in a conjugal relationship with someone else. Some provinces preclude a surviving spouse from benefiting under the laws of intestacy in those circumstances.

### LIRAs, LIFs and other Locked-in Plans

Locked-in plans are governed under pension legislation, based on the jurisdiction of the funds. This legislation specifically dictates distribution of the funds on death of the annuitant if there is a spouse or other individual with similar rights.

The pension jurisdiction must be taken into account when completing a designation of beneficiary. If someone other than the spouse (or equivalent) is named, legislation may override the designation.

Additionally, certain jurisdictions give priority to the legal spouse over a CLP. For example, if

an individual has an estranged spouse and a CLP who is the named beneficiary, the spouse may be entitled to the proceeds of the locked-in plan, in some jurisdictions.



Some pension jurisdictions also permit the spouse (or other individual with similar rights) to waive their entitlement to the proceeds on the death of the plan holder, thus allowing someone else to be named as beneficiary. This is commonly used in second marriages where it may be more appropriate for the proceeds to be passed on to children from the first marriage.

***Spousal entitlement is only one issue in this complex area. To ensure other important matters, such as tax implications, are considered in an individual situation, advice from an estate planner or independent tax and legal counsel should be sought.***

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