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**Next Issue: Property Ownership—Joint Tenants vs Tenants in Common**

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## PROTECTING YOUR INHERITANCE—THE DANGER OF INTERMINGLING!

Inheritance received during a marriage or de facto relationship is prima facie your separate property. That means it is protected from relationship property claims by your spouse or partner in the eventuality of separation or death. The danger for most people in the real world, however, is that they intermingle their inheritance with relationship property to an extent that the inheritance loses its “separate property” classification. This means that the spouse or partner have a claim on separation or death.

How does this work? Take the case of Sally and Peter who had been in a de facto relationship for ten years. Basically Peter was a bit of a loser. He had a bad P problem which was expensive and wasn’t going away. Peter had been unemployed for a number of years and blamed the Government because there were no jobs available. However, Sally always managed to find work and in between taking care of the children and cooking Peter’s meals, she always worked part time in the evenings cleaning a local law office.

Sally’s parents, George and Mildred, never liked Peter. They always saw him as a loser. In fact, George and Mildred were so concerned regarding what would happen to their estate upon their death that they had discussed it with their lawyer on a number of occasions. However, due to the various dilemmas they found themselves in, never got around to re-organising their estate to protect it from potential claims that Peter might make after their death. Well Sally’s world fell apart one evening when George and Mildred were tragically killed in a car accident. After the funeral Sally, being an only child, learned that she was the sole beneficiary in her parents’ estate and was to receive approximately \$500,000.00. All of a sudden Peter was on his best behaviour and even convinced Sally that he had beaten his P addiction. Sally was so convinced with Peter’s sincerity that she took the view that their relationship was back on track and convinced herself that she really did love Peter.

Despite legal advice, Sally took her inheritance moneys and immediately deposited her inheritance into her and Peter’s joint account with ASB Bank Limited. After a few weeks Sally, convinced that Peter had redeemed himself, decided that the most prudent decision would be repay the mortgage on the family home which was jointly owned by her and Peter. This would take enormous pressure off Sally as it meant she could reduce her cleaning job hours in the evenings. However, before too long Peter was back to his normal ways and once again there were no jobs available and he was using P on a daily basis.

In the end Sally decided that her parents had been correct and Peter really was a loser and she sent him packing out the front door with only his suitcase and personal effects. Peter went flatting with some other P addicts who were sympathetic to his cause. Within a couple of weeks Sally received a letter from Peter’s lawyers seeking half of all relationship property.

It is, therefore, important that clients understand how the law works in this situation:

- (a) The inheritance of \$500,000.00 received by Sally was her separate property (S10 (1) Property (Relationships) Act (“PRA”) 1976). While those moneys were held by the estate’s solicitor Peter would never have a claim. If Sally had deposited those moneys into an account in her sole name, then the inheritance moneys would retain their separate property status;
- (b) However, Sally chose to deposit the moneys into a joint account. S8 of the PRA 1976 states that jointly owned assets are relationship property. This, therefore, places S8 in conflict with S10. The High Court has now clarified the conflict in the decision of S v W [2006] 2 (NZLR) 669 where it held that S 10 prevails and where inheritance moneys or other form of separate property is deposited into a joint account, then it will retain its separate property status. So far so good!;
- (c) However, Sally under Peter’s influence then took the money out of the bank account and repaid the mortgage on the family home. The family home is always relationship property regardless of the circumstances. It is extremely rare for the Family Court in New Zealand to depart from an unequal division of the family home. The moment Sally used her inheritance moneys to pay off the mortgage loan, the classification of her inheritance changed to relationship property and Peter will legally get half of that inheritance.

This is the danger of intermingling inheritance with other relationship property assets. It is possible for you to structure the ownership of your assets in order to minimise any risk from your children’s partners along the lines of the circumstances outlined with Peter and Sally above. We offer a free 20 minute consultation to discuss options in this regard. Please feel free to contact any of our solicitors to arrange an appointment.