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INHERITANCE ON SEPARATION

A common issue to be resolved when parties separate is to deal with the issue of inheritance received by one party during the relationship or marriage.

The question is always asked whether half is lost to the other party or whether the inheritance is kept by the recipient party as their sole property.

It all comes down to classification. S10 of the Property Relationships Act 1976 ("the Act") provides that inheritance is not relationship property unless it is intermingled with other relationship property.

Take the example of Peter and Kate. Not long before they separated Kate received an inheritance from her father's estate of \$500k. Clearly S10 provides that Kate would retain the \$500k upon separation provided there is no intermingling.

Let me give you some examples of how intermingling works:

- a. Upon receipt of the inheritance Kate places the \$500k into an interest bearing deposit account with her bank and the funds remain there until separation. There has been no intermingling with relationship property so the moneys are retained by Kate as her separate property;
- b. However if upon receipt of the inheritance Peter talks Kate into using the \$500k to pay off their mortgage loan then what happens?

Clearly the debt has been extinguished and the family home which is relationship property retains its status as relationship property and is therefore shared equally. All Kate has done is used her inheritance to increase the value of relationship property and the moment she used those funds to pay off the mortgage loan she lost half to Pete because in effect it has been intermingled with the family home which is relationship property;

- c. Finally what if Kate deposits the \$500k into the parties joint account. Over a period of time moneys come in and out of the account so that the original amount is no longer identifiable as Kate's separate inheritance. Again over a period of time if the funds are so intermingled that it cannot be clearly identified then intermingling would have occurred and Pete and Kate would share equally upon separation.

Should you have any concerns upon receipt of an inheritance then it is important you take legal advice so as not to risk your inheritance through intermingling with other relationship property.

20 MINUTE FREE

WANT to review your Family Trust structure? THEN call us and take advantage of our 20 Minute Free interview