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Estates & Wills & Trusts

Separation agreement must cover estate, joint tenancy



When a couple decides to separate and there's very little prospect of reconciliation, it's important to update the estate plan immediately, says Markham estates litigation lawyer [Charles Ticker](#).

If a couple hasn't entered into a separation agreement that covers claims by the other against their respective estates, and one spouse dies, the surviving spouse may be entitled to the entire estate, says Ticker.

"If they have a will where each spouse names the other as their primary beneficiary, in most cases that would mean the gift to the separated spouse will still exist if one spouse dies," he says. "It's important to understand if your marital situation changes, you have to get legal advice and take care of your estate planning right away," he says.

He says the wording of a separation agreement that covers claims by the other against their respective estates is crucial. If the wording isn't correct, the agreement may not act as a true release.

"There have been cases where parties thought they had signed off their rights to the estate in the agreement but the courts have held the wording wasn't specific enough," he says.

Ticker says a couple also has to look at their joint assets, like a joint bank account or real estate, upon separation.

"Those joint tenancies should be severed as soon as possible after separation," he says. "If they're not, those joint tenancies may still have effect and go to the surviving spouse. If parties were in the process of negotiating a separation agreement, or it can be shown there was an intention to sever the joint tenancy, if the parties can't agree then you may be leaving it up to a judge to decide if that joint tenancy was really severed."

In cases where a separating couple has no estate plan, Part II of the [Succession Law Reform Act](#) sets out how the estate will be distributed.

"In that situation, if there's an intestacy and there's no separation agreement, the surviving spouse – even though the parties may have been separated for many years – may get the entire estate if there are no children," Ticker says. "I've seen cases where a person has died and left behind other family, like parents and siblings, and those surviving family members get nothing if that person dies without a will," he says.

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"The separated spouse in that situation is entitled to the entire estate (if there are no children) and while that may cause a lot of grief, there's not much the surviving family members can do about it."



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