

Joined Together even after Divorce!



By Brian Madigan LL.B.

You probably never thought of this and it certainly doesn't happen very often, but when it does it definitely causes havoc.

Let's take the case of Jim and Wendy. Wendy's parents never really liked Jim. He was a truck driver and stopped in most evenings at a late night diner where Wendy worked while she was putting herself through school.

One thing led to another and Cynthia was arrived in nine months. Jim was a long distance trucker. He said he would do right by the child, and married Wendy. Her parents allowed the couple to stay in a small house that they purchased when they were first married. So, they turned out the tenants and Wendy, Jim and Cynthia all lived in the house.

The only problem was that he was never home, he never put any money towards the household expenses and eventually Wendy and Jim obtained a divorce. Yes, they made a little mistake. The house had been registered in the names of both Wendy and Jim. Not having any money to buy out his interest, Wendy went to her parents. They came to the rescue and bought out Jim's interest in the property.

Some time went by, Jim never paid any child support, he never came to visit and after a period of time, they lost touch with him.

Wendy's father passed away and left his estate to Victoria (Wendy's mother). One day tragedy struck! Victoria, Wendy and Cynthia went on a family vacation. They were involved in a car accident. Both adults were pronounced dead at the scene. Cynthia because she was in a car seat survived, but did not make it to the hospital.

So, what happens to all the money? Wendy's parents had Wills. They included survivorship provisions. In other words if the husband and wife were in a common disaster, the survivor had to live for at least 30 days before they would inherit the estate. This was initially intended to avoid double taxation of estates.

However, Victoria's Will did not include this provision in respect to other beneficiaries, only her late husband.

Wendy, always intended to make a Will, but never really got around to it.

You need to know some of the legal rules that will apply:

- The younger is deemed to survive the elder
- The insured (under a life policy) is deemed to survive the beneficiary
- The laws of intestate succession will apply if there is no Will

I should point out that the first two rules only apply in the case of uncertainty. In this case, the some of the facts are clear; Wendy and Victoria were both survived by Cynthia, even if it was for only a few minutes.



Victoria's estate went to Wendy. There was no common disaster clause. Her life insurance although made payable to Wendy as her beneficiary instead went to her estate. However, that was Wendy again. They just had to pay probate fees on the life insurance proceeds.

Wendy's estate went to her daughter Cynthia. This included all the money from Victoria's estate.

Now, what happens to Cynthia's estate. Well, she didn't have a Will, she was only 5 years old. All her money went to her parents equally (or the survivor of them). So, Jim was entitled to everybody's money!

This is not a good result. Wendy's parents came to despise Jim. He was the last person on earth that they would ever give money to. They hadn't seen him in over 4 years. Wendy didn't care for him either, and particularly the fact that he never once called to see how Cynthia was. Again, he was the last person on earth that she would leave her money to.

Wendy thought that since she was divorced from Jim, he was gone forever. No, not really, once married they were inextricably intertwined forever. So, the immortal words "**til death do us part**" applied in this case.

Do you think that Jim would surface? Of course, he did. And, do you think that he would give the whole estate to charity? Of course, not. He did however, inherit enough money to quit his job and retire to a sunny vacation spot.

There is obviously a lesson to be learned. This fact situation is repeated all too frequently.

So, here's what to do:

- get a marriage contract
- don't put the house in Jim's name until you know him
- give the house to Wendy and secure it by a mortgage loan on title
- use common disaster clauses for close family members not just spouses
- get a full release from possible inheritances at the time of divorce
- sign a new Will
- consider trust provisions and alternative gifts if minors have funds but cannot make a Will

In this particular case, Jim inherited everything, and this didn't need to be the case. With a little cautious planning, Jim could have been blocked at several steps.

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