

## Estate Planning Issues for Separate Couples **Hull on Estate and Succession Planning Podcast #56**

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Suzana Popovic-Montag: Hi, and welcome to Hull on Estate and Succession Planning. You are listening to Episode #56 of our podcast on Tuesday, April 17<sup>th</sup>, 2007.

*Welcome to Hull on Estate and Succession Planning, a series of podcasts hosted by Ian Hull and Suzana Popovic-Montag, that will provide information and insights into estate planning in Canada, from the offices of Hull Estate Mediation in Toronto, Ontario, Canada. Here are Ian and Suzana.*

Ian Hull: Hi Suzana.

Suzana Popovic-Montag: Hi there Ian.

Ian Hull: We, in our last podcast, sort of wrapped things up from some of the basic contexts of married couples and estate planning, and talked a little bit about insurance issues and the like. Today let's turn this around a little bit and start dovetailing into our discussions and into our analysis the prospect of how to deal with situations where you have separated spouses, both separated spouses and, of course, spouses who remarry and some of those consequences. I was struck, I had the privilege of spending some time last week at the Masters watching some golf. And it's the greatest sport event in the, in my view, in existence. But what I was amazed by was one night we were out for dinner and here we were. Augusta is a small town, relatively speaking, and we met some people that were from San Francisco area. And sure enough, within five minutes of discussing what we all did for a living, we started talking about experiences. And the two issues that came up instantly, and just in this casual conversation, were the impacts of separated spouses on the family subsequently. And in this case, one of them had talked about not been, he said, look I wasn't even invited to my Dad's funeral, my stepmother had locked me out entirely and talked about that kind of scenario. And it struck me that, I mean this issue is really present in our society with the statistics providing the trend, obviously over the last fifty years, to the separated spouses being more of a reality. So I thought that it might be useful to talk a little bit about some of the things we've been talking about but some of the twists and turns that get created when you have a separated spouse.

Suzana Popovic-Montag: And I think, Ian, when you say separated spouse, I mean we're also including in that people who haven't necessarily been married but have been in common-law relationships. And those jurisdictions where those are realized and recognized as almost the equivalent of a married spouse situation.

Ian Hull: Oh absolutely, and I think that's in fact the common-law couples can, and the same sex couples up here in Canada can, add a further level of complexity in some situations when you're dealing with estate planning and the like.

Suzana Popovic-Montag: So, Ian, in terms of the financial planning considerations, what are some of the things that would be different in a situation where you have people who've separated as opposed to the married or, you know, the relationships that we talked about in earlier podcasts?

Ian Hull: Well I think the first thing that comes to mind is, and which is really a flash point, certainly I've seen in our practice, is the question of ownership of property.

Suzana Popovic-Montag: I think that it might be a good idea to keep in mind that when you have a relationship breakdown, you want to maybe consider the nature and extent of your assets and how those things are held, so that if it turns out that quick action has to be taken, you can do so meaningfully.

Ian Hull: And it may be a good idea, in some situations, when you enter into a relationship, to keep assets separate, investments and bank accounts as opposed to in joint names, which is the traditional approach and one that obviously has its own estate planning merits.

Suzana Popovic-Montag: And if you haven't done that but you find yourself in one of these situations, then it is usually a good idea to separate your investments, your bank accounts and let your financial advisors know of the relationship breakdown, so that steps can be taken immediately to separate the two sets of assets, so that, you know, things don't go missing somehow at the end of the day.

Ian Hull: And on this question of ownership of a property, bank accounts are a flashpoint. Many people don't understand the impact of these banking documents that they sign when they arrange these bank accounts. For example, they go in as a happy couple and don't anticipate problems down the road and they've realized that, for example, it only takes one signature to clear out the account. Those are some of the things that you want to at least be alerted to that can be a problem. And the second part is this whole question of joint ownership. And the fact that you own this account essentially, if you should die and it will flow to your spouse by operation of law typically. And sometimes you have a situation where the spouses are in the midst of arranging affairs, have separated and for all intents and purposes from a physical standpoint, but haven't thought through some of the consequences of the ownership issues.

Suzana Popovic-Montag: And then you might also want to keep in mind, if you've set up a system where you have automatic payments coming out of your accounts, and maybe those payments are something that is specifically geared towards just one of the spouses, you want to consider whether or not those should be discontinued and how quickly you can do that.

Ian Hull: Another short term, but can have a long term financial impact, is how you deal with the credit that you've either arranged or got into commitments with.

Suzana Popovic-Montag: And that sort of flows from the discussion we had, Ian, on the ownership of property, same kind of thing. If you've got lines of credit or you've got some kind of mortgages, or things with the financial institutions that are in your joint names, you want to consider how this relationship breakdown now will affect that and the possibility that the other partner can somehow act to your detriment.

Ian Hull: One classic example is, of course, the use of credit cards. (Laughter) I've been in situations where separated spouses and then quickly thereafter one of the spouses dies, and sure enough, in the interim, that separated spouse has, maybe unbeknownst to the spouse who passed away, racked up a big credit card bill. The credit card company says hey, you signed the documents, you both are committed to it. And the same thing can happen on a line of credit, when the spouse dies in the process of transferring assets and leaving big liability behind.

Suzana Popovic-Montag: And so, sort of similar to a situation where you have your wallet or your purse stolen, suddenly you want to find yourself closing these accounts or, you know, having new ones re-issued in your name alone, because you want to prevent the possibility that those kinds of things can actually happen.

Ian Hull: So while this is not, and we would never pretend to be family law lawyers, these are sort of ideas and issues that you might want to consider from a financial planning standpoint.

Suzana Popovic-Montag: And in addition to the immediate financial concerns, Ian, that come to mind right away, you also want to start thinking about the future as well.

Ian Hull: And by doing that, we often find it really helpful to immediately sit down with a financial planner and get some advice and some guidance on how you want to organize your affairs.

Suzana Popovic-Montag: And that's really because you want to change your thinking, because essentially when we're meeting with our advisors during our lifetime, we're in this happy mode where everything is rosy. But now that you're in a marriage or a relationship breakdown, it's a different situation, where you have to start thinking a lot differently.

Ian Hull: And it's not for this podcast, but of course, we always suggest to our clients that they immediately deal with their Wills and Powers of Attorney. But we'll talk more about that and those steps with your lawyer possibly, for sure, at a later podcast. Let's turn to some tax planning issues, again in the context of a situation where you have separated spouses, and how we dovetail that into the estate planning considerations.

Suzana Popovic-Montag: And again, I mean we have no tax expertise and we don't profess to be tax experts, but there are things that we just want to sort of keep top of the mind in these kinds of situations, so that they can at least trigger some thinking and planning from individuals' perspectives.

Ian Hull: And here in the Canada, the tax filing deadline is April 30<sup>th</sup>, (Laughter) so we're all mindful of the hidden liabilities that exist in our own worlds. But it's really important to, when you get into a separated situation, immediately address what is the unknown tax liability when you're considering where you stand financially at that moment in time.

Suzana Popovic-Montag: And those tax liabilities are also things that you want to explore and be aware of when you start negotiating possibly a settlement of the property of the assets, of you know, things that you want to divide amongst the parties, so that you're making very informed decisions and you aren't suddenly, you know, dividing things without realizing that the after tax value of an asset might not be the same as you had expected.

Ian Hull: So it seems to me really, we're at this point where, if you have a relationship that has come to an end, and whether common-law or married, and you've got some immediate concerns. The first is, you've got to go see a lawyer, the second, well not necessarily in this order, but you need to see a lawyer about your Wills and Powers of Attorney, you need to see a financial planner about your financial and your investment situation. And then thirdly, you need to see a tax advisor to start to identify some of these key issues. And presumably, and possibly anyway, the tax liability being one, the unknown, that's the first thing to determine. What's another good idea to talk to your tax advisor about when you're sort of canvassing how you're going to deal with these assets as you're in this separated mode?

Suzana Popovic-Montag: Well, you want to consider, Ian, the capital gains or capital losses that may have accumulated on property during the course of the relationship, and what those might be and how they can be used most strategically and efficiently for the purposes of some kind of negotiated settlement or division of the assets.

Ian Hull: And that is again one of those hidden things, where you sit around the table and you've decided how you're going to divide up, so and so may have the cottage, so and so may have the RRSP's. And you need to overlay on top of that the tax considerations because there may be deemed dispositions, there may be triggering of these taxes, that totally change the dynamic. And I think, as we sort of wrap up today's podcast, one of the reasons why we wanted to talk about these front end situations, because these situations don't always apply to a situation of an estate. But what often happens in our practice is, is that these issues haven't been addressed by the clients and we have to pick up the pieces in a situation where there is a separation and then suddenly a death or not so suddenly a death, where the separation has been for many years, but they've never bothered to sort of organize their financial affairs, and then we sit around the table after one of the spouses has died and try to pick up the pieces. So if you can do things at the front end to avoid those problems, it takes a lot of strain off your estate at the other end.

Suzana Popovic-Montag: That's a really good comment Ian, well thank you very much, I look forward to our next podcast.

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