Laurie Salvador

When a Spouse is Not a Spouse . . .

AND OTHER INTERESTING POINTS ABOUT FAMILY LAW IN BC

The new *Family Law Act* was enacted in BC a year ago, in March 2013.

With the radical changes now in effect, we all can benefit from more education on the subject of Family Law. Although BC Notaries don't practise in that area of law, it affects most of our lives personally and certainly affects the estate planning documents we do for our clients.

Statistics prove that almost 50 percent of relationships fold. The Education Committee of The Society of Notaries asked Family Law lawyer Audra Bayer to speak at our Fall Conference in Kelowna in 2013. She was received with great enthusiasm, in part because we were anxious to hear her expertise and in part because she is such an engaging speaker.

My take-away from the session was that we needed to include Family Law information as part of our Practical Training for all newly graduating BC Notaries.

In January 2014, Zahra Jimale, a lawyer passionate about Family Law, lead a lively morning discussion with our graduating students.

Here are the Key Highlights.

Under WESA *(Wills, Estates and Succession Act)*

1. Two persons cease being spouses of each other for the purposes of this Act if
   (a) in the case of a marriage
      i. they live separate and apart for at least 2 years with one or both of them having the intention, formed before or during that time, to live separate and apart permanently, or
      ii. an event occurs that causes an interest in family assets, as defined in Part 5 [Matrimonial Property] of the *Family Relations Act*, to arise,
   (b) in the case of a marriage-like relationship, one or both persons terminate the relationship.
2. A relevant time for the purposes of subsection (1) is the date of death of one of the persons unless this Act specifies another time as the relevant time.

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The important message here is that common law relationships do not have the benefit of the 2-year "grace" period. If they are not together at the time of death, they do not have a claim on the other's estate (except for jointly owned assets).

A common law relationship ends when one half of the couple decides it's over; there is no waiting period. They are no longer spouses at the moment such notice has been given. That notice can be verbal, nonverbal, or written—but preferably written. If one of them dies before they settle their affairs, it could mean the surviving party would not have a claim on the estate of his or her former partner.

In the event of death, the guardianship of minor children or children who have not been able to leave the care of their parents falls to the surviving natural parent, unless the child has never lived with that parent. A completed Form 2 will at the very least inform the Court who the client would want as the Testamentary (in case of death) Guardian or Standby Guardian (in case of incapacity). It is not automatic. A Court determines what is in the best interests of the child, based on the circumstances at the time.

At the end of a relationship, all the assets of the spouses are family assets, subject to division, except for excluded assets such as gifts, inheritances, and assets each spouse brought into the relationship. The value by which the excluded assets increase during the relationship, however, is considered a family asset and is also subject to division.

Separation agreements can be made binding on the estate of each spouse.

At the very least, couples who are separated or who are thinking of separating should not delay in having their affairs put in order and getting on with the formal separation of assets. Failure to do so could end in an unpleasant surprise when the parties find they may not be entitled to any part of the estate of the former spouse. ▲

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