



Legal Education
Society of Alberta

62113.00

Family Law Considerations for the Wills and Estates Practitioner

Edmonton, Alberta

Calgary, Alberta

Chair

Fulvio M. Durante

Dunphy Best Blocksom LLP
Calgary, Alberta

Faculty

Rhoda Dobler QC

Widdowson Kachur Ostwald Menzies LLP
Calgary, Alberta

Laura H. Bruyer

Gordon Zwaenepoel
Edmonton, Alberta

Shelly K. Chamaschuk

Reynolds Mirth Richards & Farmer LLP
Edmonton, Alberta

Catherine E. Gerrits

Dunphy Best Blocksom LLP
Calgary, Alberta

Sherrilynn J. Kelly

Parlee McLaws LLP
Calgary, Alberta

Michael Klaray

Duncan Craig LLP
Edmonton, Alberta

LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2019, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2019. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

ISBN-10: 1-55093-713-8
ISBN-13: 978-1-55093-713-8

Separation Agreements and Life Insurance – Pitfalls and How to Avoid Them

Family Law Considerations for the Wills and Estates Practitioner

Prepared by:
Laura H. Bruyer
Gordon Zwaenepoel
Edmonton, Alberta



Legal Education
Society of Alberta

For presentation in:
Edmonton, Alberta – March 6, 2019
Calgary, Alberta – March 13, 2019

**SEPARATION AGREEMENTS AND LIFE INSURANCE -
PITFALLS AND HOW TO AVOID THEM**

Introduction	2
Case Studies and Practice Points	2
<i>Perry v. Perry</i> , 2009 ABQB 687 [<i>Perry</i>]	2
<i>Scheelar v. Scheelar</i> , 57 R.F.L. (7 th) 413 [<i>Scheelar</i>].....	7
<i>Manufacturers Life Insurance Co. v. Senesouma</i> , 2016 ABQB 495	9
<i>Marasse Estate (Re)</i> , 2017 ABQB 706	12
<i>Malboeuf v. Hanna</i> , 2018 ONSC 6562.....	15
<i>McLeod v. McLeod</i> , 2006 ABQB 927.....	16
Conclusion	19
Appendix "A"	
Appendix "B"	

INTRODUCTION

The following paper looks at cases within the last few years as to how life insurance/enurement claims securing support in Separation Agreements survive the payor's death. This paper does not purport to be an exhaustive look at the caselaw but focuses on specific cases and findings by the Courts therein.

Ensuring there is proper security for the payment of ongoing life and/or spousal support is one of the most difficult practice areas in family law. The untimely death of a payor spouse can have devastating consequences to his/her former spouse and children. Ensuring that a payor spouse fulfills his/her contractual obligations in that regard is essential. As outlined in the following cases, clauses in Separation Agreements which Counsel intend to protect the recipient spouse and/or children may in fact not have that effect. Further, the consequences of the same are often not known until many years later. It is important to ensure that:

1. The Agreement accurately reflects the parties' intentions;
2. The Agreement is clear as to each party's respective obligation surviving death;
3. The payor spouse is advised as to his/her obligation to provide and maintain the security;
4. The recipient spouse is aware of his/her obligation to ensure the security is in place and maintained; and,
5. Counsel for the parties have explained the obligations, the risk associated with the same, and the fact that it is the **client's responsibility** to ensure the obligations are met on an ongoing basis.

The foregoing is most effectively done by giving careful thought to the drafting of the Separation Agreement and ensuring Counsel's advice is well documented in correspondence.

(Specific thanks to Catherine Spafford and Sam Rollans for their assistance with this paper)

CASE STUDIES AND PRACTICE POINTS

Perry v. Perry, 2009 ABQB 687 [Perry]

Relevant Facts:

- The husband died intestate in 2008.

- He had not removed his first wife as beneficiary under his group life insurance policy; she was seeking a declaration from the Court entitling her to said life insurance proceeds.
- The husband's current wife argued the life insurance proceeds should be payable to the husband's estate and divisible under the *Intestate Succession Act*, RSA 2000, c I-10.
- The husband had separated from his first wife in May 2001 and divorced in May 2003. He married his second wife two months later in July 2003.
- The husband had one son from the first marriage and two children from the second marriage.
- The husband and his first wife entered into a Parenting, Support and Property Agreement dated December 17, 2002 ("the Agreement"). The Agreement provided specifically as follows:

The Husband shall maintain a life insurance policy on his life at his expense with a death benefit of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS with the wife as the sole irrevocable beneficiary in trust for the child, for so long as the husband has to pay child support obligations under this Agreement or any court order and FIFTY THOUSAND (\$50,000.00) DOLLARS with the wife as the sole irrevocable beneficiary for so long as there is a spousal support obligation under this Agreement or any court order. The husband shall provide a copy of the policy to the wife upon signing this Agreement.

- The Agreement contained the usual releases with respect to property and other claims.
- The husband sought to terminate his spousal support obligations to his first wife in December 2003; in his Affidavit in support of the application, he also requested that any life insurance in place to secure the spousal support should also be terminated. Spousal support payable to the first wife was terminated by the Court in February 2004.
- The husband died in 2008.

Issue:

The first wife took the position that she was the named beneficiary under the life insurance policies and was entitled to the insurance proceeds. The second wife took the position that the termination of the spousal support, and the request to terminate the life insurance securing the spousal support, demonstrated the husband's intention **not** to benefit his first wife.

Could the court could find that there was a declaration by the husband on the evidence, necessitating a rectification of the policy and the imposition of a trust on the insurance proceeds?