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Do I have to share my inheritance with my ex?

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The family property legislation in Manitoba states that former partners or spouses (referred to as "partners" in this article) are entitled to an equal sharing of the assets and debts that either or both of them acquired during the years that they lived together. The legislation specifically states that inherited assets are not to be shared in the event of separation. There are, however, exceptions to this general rule and as such there are situations when an inherited asset may have to be shared between separated partners.

The first exception to the general rule is found in the family property legislation, which states that an inherited asset is not shareable "unless it can be shown that the inheritance was devised or bequeathed with the intention of benefiting both spouses or common-law partners." For example, if Grandma specifies in her Will that she is leaving $20,000 to her Grandchild A and their partner, and Grandchild A and their partner then receive those funds upon Grandma's passing, those inherited funds would be shareable between Grandchild A and their partner even though it was Grandchild A's relative that left them the money, because Grandma specified her intention for the funds to benefit both partners.

The second exception to the general rule has been established by the courts. The courts take the approach that if a partner receives an inheritance and "co-mingles" the inheritance with their partner, the inheritance is then shareable between them if they separate. To co-mingle an asset means to take an asset that is owned in one's own name, and somehow make it joint with a partner.

For example, if Grandma indicates in her Will that she is leaving $20,000 to her Grandchild A (alone), and Grandchild A then receives those funds upon their Grandma's passing, and Grandchild A puts those inherited funds into their joint bank account with their partner, they have co-mingled the funds and they would be equally shared between Grandchild A and their partner if they were to separate.

On the contrary, if Grandchild A put their inherited funds from their Grandma in their own bank account and left the funds in their own bank account, the inherited funds would not be shareable with their partner if they were to separate. By way of a further example, if Grandchild A inherits $20,000 from their Grandma upon her passing and uses that money to buy a car and registers the car in joint names with their partner, the value of the car will be shareable if Grandchild A and their partner later separate because they made the car a joint asset. On the contrary, if Grandchild A registers the car in their own name, the value of the car will not be shareable in the event of separation.

There are some other less common instances in which an inherited asset can be considered shareable in the event of separation, but it seems to be most common that inherited assets become shareable because the partner that inherits the funds co-mingles them with their partner without realizing the impact of doing so. If a partner wants to ensure that assets they inherit do not need to be shared with their partner in the event of separation, they should keep the assets in their own name.

It can also be helpful to keep a record of inherited assets so that if it is ever in question as to how an asset was obtained, there is a clear record that confirms what funds or assets were inherited throughout a relationship. It may also be appropriate in some instances for partners to enter into a spousal agreement (also known as a prenuptial agreement or cohabitation agreement) to ensure that any inherited assets are not shareable in the event of separation even if they are co-mingled in certain ways.

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