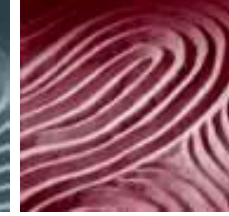


2500, 20 Queen St. West  
Toronto, ON M5H 3S1  
Canada  
Tel. 416.595.8500  
Fax.416.595.8695  
www.millerthomson.com



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## ESTATE PLANNING FOR SAME-SEX COUPLES AND INDIVIDUALS

By Rachel L. Blumenfeld

and

Sheila D. Pressick

MAY 31, 2004

# Estate Planning for Same-Sex Couples and Individuals

Sheila D. Pressick  
&  
Rachel L. Blumenfeld

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# The 99 Game

- ◆ Circle as many numbers, starting with 1,2,3...etc. as fast as you can for 30 seconds
- ◆ Continue circling from where left off for 15 more seconds
- ◆ Notice a difference?

# Introductions

- ◆ Sheila: 9 years in the business, currently enrolled in CFP, mentioned in Toronto Sun/24 article
- ◆ Rachel: 8 years in the field, worked at Insurance Co., Estate planning and Administration



## Steven and Paul

### CURRENT SITUATION

- ▼ Have been living together for 12 years. Own a house together (not sure how title is held).
- ▼ Every now and then they think about having their wills drawn up.
- ▼ They are considering getting married in the fall.
- ▼ They file their tax returns as “common-law spouses.”
- ▼ Paul’s family is not overly supportive of their relationship.

# Issues on intestacy

## No Will, not married:

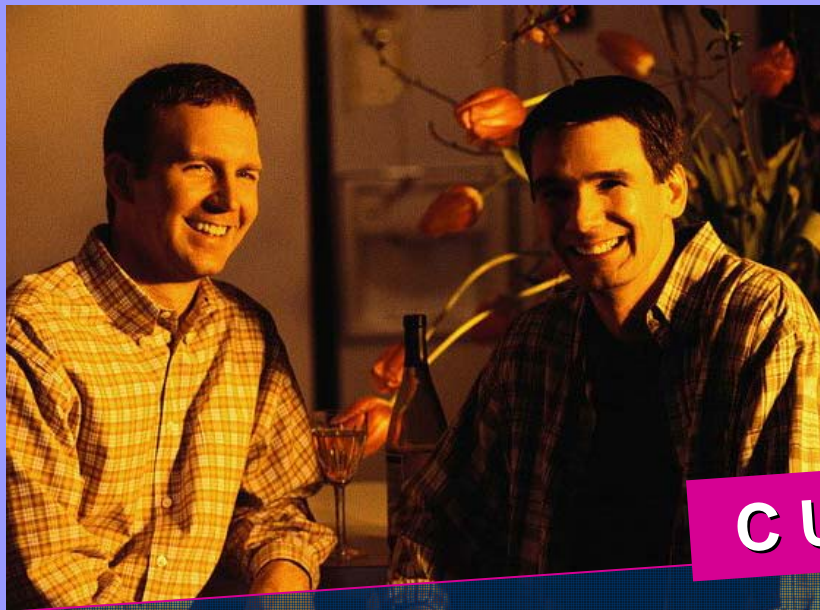
- ✘ Property held as joint tenants will pass to survivor
- ✘ Common law rights
  - ◆ Constructive trust?
- ✘ No rights on intestacy
- ✘ Dependant's relief?
- ✘ No FLA election

## No Will, married

- ✘ Intestacy rules may apply
- ✘ Dependant's relief?
- ✘ FLA election may apply

# Considerations for estate plan, Will

- ◆ Probate planning
  - ✕ Joint tenancy for certain assets
- ◆ Taxes
  - ✕ Accessing spousal rollover
- ◆ Executors
  - ✕ compensation



## David and Michael

### CURRENT SITUATION

- ▼ David and Michael have been together for 2 years.
- ▼ David's divorce is nearly finalized. He had been separated for 5 years and has two children.
- ▼ Michael contributed some money to help finance the buy-out for the divorce.
- ▼ 7 years ago, when David's mother passed away, he had his own will prepared. It named his ex-wife as executrix and beneficiary, with his kids as contingent beneficiaries.
- ▼ David suffered from a heart-attack and died last week at 47.



# Issues

- ◆ Ex-wife's entitlement?
  - ✕ Before/after divorce
- ◆ Children's entitlement
- ◆ Michael's entitlement
  - ✕ Creditor?
- ◆ Domestic agreement



Denise

## CURRENT SITUATION

- ▼ Has her own successful business.
- ▼ Thinking about bringing a partner into the business.
- ▼ Believes in giving back to the community – does considerable volunteer work.
- ▼ Wants to leave charitable bequests to her favourite charities.

# Issues

- ◆ Probate planning
  - × Multiple Wills
- ◆ Business succession plan?
  - × Buy-out by business partner?
- ◆ Charitable donations
  - × Must have a Will to leave bequest
  - × “Creative” planned giving
    - ◆ Life insurance, RRSP



## Jen and Samantha

### CURRENT SITUATION

- ▼ Been living together for the last 8 years.
- ▼ While on her way to see a client, Samantha was in a major car accident and suffered significant head trauma.
- ▼ James, Samantha's brother, believes he is entitled to be appointed Samantha's guardian and intends to apply.

# Issues

- ◆ Does Samantha have a Power of Attorney?
  - ✕ Continuing Power of Attorney for Property
  - ✕ Power of Attorney for Personal Care
- ◆ *Substitute Decisions Act*:
  - ✕ Who is entitled to apply as guardian?
- ◆ *Health Care Consent Act*:
  - ✕ Who is entitled to make decisions?

# Wrap up

- ◆ Final questions
- ◆ Evaluations
- ◆ Draw