

YOURS, MINE, AND OURS
HOW NOT TO PLAN FOR JOINT AND
SEPARATE PROPERTY

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- Issue
- Facts
- Problems
- Procedural History
- Recommendations

ISSUE:

WHAT ARE SOME OF THE POTENTIAL PROBLEMS AND BEST PRACTICES WHEN YOUR MARRIED CLIENT HAS SEPARATE PROPERTY?



FACTS:

February 2020: The Wedding

February 2021: Husband creates separate estate plan without Wife's knowledge or consent

April 2021: Husband deeds home to individual trust without Wife's knowledge or consent

July 2022: Husband dies

July 2022: Litigation

POTENTIAL PROBLEMS:

Everything will probably be fine...

PROBLEMS:

Deed:

Title 16 O.S. § § 7.1 and 7.2

Deals with deeds, marital interests, and marketable title

Will:

Title 84 O.S. § § 42 and 44

Deals with rights related to wills and separate property

DEED

- In order to convey marketable title, a deed must state whether the Grantor is married, and, if so, must either include the Grantor's spouse's signature, an affidavit signed by the Grantor's spouse, or a separate deed from the Grantor's spouse to the same Grantee.



WILL

- "A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single."
- No similar provision for married men.



1. Probate Court – Appointment of Special Administrator
2. Civil Court – Declaratory Judgment
3. Court of Civil Appeals – Affirmed Lower Court Ruling
4. Probate Court – Admit Will, Appoint Representative, Determine Interests

PROCEDURAL HISTORY:

- Intake procedure for meeting with one spouse
- Policy on representing one spouse without the other's knowledge or consent
- Communication strategy about the risks of such planning
- Be consistent

IDEAS



THANK YOU

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