

WHAT? MY DEATH MIGHT BENEFIT MY EX?

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Separating from a spouse or de facto partner is a difficult and upsetting time for most people. People are often cognisant of the importance to instruct a family lawyer shortly after separation to manage their affairs in a timely fashion.

In the stress and confusion immediately following separation, however, many people overlook estate planning considerations that may have serious ramifications for separated people in the unfortunate case of that person's death.

On Divorce, the validity of certain provisions of a person's Will, Enduring Power of Attorney and Superannuation and/or Life Insurance Benefit Nominations (Binding Nomination) may be affected.

On separation, however, prior to:

- The commencement of property proceedings in the Family Court or Federal Circuit Court; or
- Divorce;

the provision of a person's Will, Enduring Power of Attorney or Binding Nomination may stand.

For example, where a separated person dies, prior to commencing family law proceedings:

- In the event that the person has a valid will, their estate may be divided in terms of their will. In many cases, a person's whole estate or the majority thereof will transfer, pursuant to their Will, to their spouse or de facto partner upon death;
- In the event that the person dies intestate, a person's estate may be divided, partly or absolutely, in favour of a spouse or de facto partner;
- In the event that the person owns a property as a joint tenant with a spouse or de facto partner, that property may transfer to the spouse or de facto partner; and
- In the event that the person has a valid Binding Nomination, the proceeds of that policy may also be paid to their spouse or de facto partner.

Where a separated person becomes incapacitated, prior to commencing family law proceedings, the spouse or de facto partner may likewise have control of that person's affairs pursuant to an Enduring Power of Attorney.

It is generally the case that parties, once separated, no longer intend to enrich a former spouse or de facto upon their death. Nor do most separated people want for the former spouse or de

facto partner to have control of their affairs in the event that they become incapacitated.

On that basis, immediately following separation, people should receive estate planning advice so that they can make informed decisions about what steps, if any, need to be taken on at least an interim basis to ensure that their wishes are followed.

For further information about how your separation may affect your estate plan, or other family law matters generally, please contact [James Steel](#) (Accredited Family Law Specialist) or [Jarrad Mobbs](#) (Accredited Succession Law Specialist).

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