

# Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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## Wills on Wheels

Have you heard of our new Wills on Wheels services? We appreciate how difficult it is in retirement living or aged care facilities to make the journey into the CBD. We will arrange for one of our lawyers to come and see you in the comfort of your own home with no additional travel costs.

We also offer a significant reduction in our standard costs and a fixed-fee will be disclosed upfront.

Contact us on (02) 4226 5711 to learn more or arrange an appointment with the 'Wills on Wheels' team.



## Estate Administration – Assisting your clients in their most difficult times

### Obtaining the Death Certificate

Sadly, death is a natural part of life. For our clients this is often a difficult time when they look to the guidance of not only their friends, but trusted advisers. A brief understanding of the estate administration process may assist.

The first step is obtaining a death certificate. The Funeral Director will generally apply for the death certificate on behalf of the family. The time taken to obtain the certificate depends on the workload (yes, the number of people dying) at birth, deaths and marriages. Ensure that details are completed correctly as often the death certificate will need to be reissued if there is a significant mistake.

### Do I need a Grant of Probate

A Grant of Probate issued from the Supreme Court of NSW formally appoints the Executor of the Estate and authorises the Executor to administer the Estate according to the Will. The lawyer will prepare and lodge all the documentation required for Probate. This will include the original Will and an inventory of the assets and liabilities of the Estate.

However, if the deceased only had a small bank account or jointly held assets, it may not be necessary to obtain Probate.

### Joint Tenants / Tenants in Common

A quick refresher on joint tenants vs tenants in common is timely. Property owned as joint tenants passes to the surviving tenant automatically by way of survivorship. The death certificate will suffice for proof of death and a Grant of Probate is not required.

Property owned as tenants in common does not pass automatically. A deceased's interest in the property passes to their estate to be distributed according to Will or intestacy law. A Grant of Probate is required.

### Avoiding a Grant of Probate

Obtaining a Grant of Probate is a costly and time consuming process. In addition to the legal fees, a filing fee is payable to the NSW Supreme Court. With proper estate planning, the costs of obtaining a Grant of Probate can sometimes be avoided.

I recently visited an elderly couple at their home to prepare new testamentary trust wills.

Some years ago, the solicitor who drafted the Wills split the joint tenancy over the home to tenants in common. The solicitor did this so that on the death of the first spouse, half of the home would form part of the estate and fall into the testamentary trust.

I recommended that the home be put back into joint tenancy for a few hundred dollars. The main reason, all of the other assets were in the wife's name and the husband was of much poorer health. While death is a lottery, it is likely he will die first. As he has no other assets in his name, if the house is only jointly it will pass to the spouse by survivorship and it is unlikely a Grant of Probate will be needed. This could save costs in excess of \$10,000 to obtain Probate.

### An Interesting Estate

Grace's husband John died suddenly of a heart attack at the age of 50. Just as unexpected for Grace and their three teenage daughters was the news that John was bankrupt. Grace worked part time, but had largely relied on John.

John had a significant life insurance policy of \$1 million paid to the estate. Fortunately for Grace, payouts of life insurance are protected from creditors under the *Bankruptcy Act 1966*. With our help, the policy was paid out in a number of weeks and Grace had money to provide for her and her daughters.

Then came time to deal with the trustee of the bankrupt estate. The deceased owed hundreds of thousands in debt, but the only real asset he held was a unit jointly owned with Grace on the Gold Coast. The trustee was adamant that the deceased's half interest in the unity would not be sold to Grace for less than market value of the equity, circa \$65,000. After months of negotiating for Grace, we purchase the half-interest in the unit for about \$20,000.

An interesting note for those paying attention, any jointly owned asset is automatically severed to tenants in common on becoming bankrupt.

### Superannuation – In Brief

Remember, superannuation is a non-Will asset (like property owned as joint tenants). It passes according to the death benefit nomination or otherwise at the trustees' discretion. See our July 2014 newsletter for further information.

- Lindsay Stoddart, Consultant