

# 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.



## Aged Care and Estate Planning – working together to achieve short and long term objectives

### Aged Care Planning

Like us, you may not be experts in aged care planning, which has its own complexities. On average, our population is living longer due to advances in medical treatment. As a result, more and more of us will spend at least some time in an aged care facility.

All too often, we find our clients making aged care arrangements without first seeking the advice of a specialist aged care professional. Many clients are unaware of the structures that could be used to assist them to obtain Centrelink and other benefits. When advice is sought, it is often far too late to assist.

A common misconception is that you will not get into an aged care facility if you do not have enough money. However many facilities require a number of financial disadvantaged people to receive government funding. Decisions are complex and specialist advice is needed to minimise the cost of aged care and ensure estate planning wishes are met.

### Planning for Bill

At the age of 80 and widowed, Bill enters an aged care facility. His assets are his home valued at \$400,000 and cash at bank of \$190,000. He receives a Centrelink pension of \$843.27 per fortnight. The facility needs a refundable accommodation deposit (RAD) of \$300,000. Bill thinks his only option is to sell the home. Under this arrangement, he would pay a basic daily care fee of \$47.86 plus a means tested care fee of \$20.66 per day. The Centrelink pension would reduce to \$780.77 per fortnight.

Alternatively, Bill could have used \$175,000 from his bank account to pay part of the RAD, with the \$125,000 balance paid as a Daily Accommodation Payment (DAP) of \$21.03 per day. The home could be rented to cover the DAP or the DAP could be deducted from the RAD. This also reduces the means tested care fee to \$5.22 per day, while also getting full Centrelink of \$867.20 per fortnight.

### Reviewing Estate Planning

This is a critical time to review clients' estate planning objectives and to ensure appropriate documents are in place. For example:

1. Are proper structures used to maximise benefits? On death, do these structures

transfer assets to beneficiaries pursuant to the deceased's wishes?

2. Who paid the RAD? Most facilities will refund the RAD only to the estate. Does the Will cover this scenario?
3. Most facilities require an Advance Health Care Directive (AHCD). Standard AHCD forms used by facilities are often wanting.

Good estate planning will ensure that aged care planning also achieves succession objectives.

### Improper provision for Joan

Joan's husband James passed away a few years ago, leaving Joan with a right to occupy the family home. This was a second marriage and both Joan and James had children from their first marriages. Now in her 80s, Joan was quite frail, when she had a bad fall. She could no longer live in the family home and needed to move into care. James had not provided Joan the right to use the proceeds from the family home to pay a RAD. James was concerned that any RAD paid from his estate would ultimately be refunded to Joan's estate for children from her first marriage.

In our May 2015 newsletter, we addressed the inadequacies of a right of occupation without the right to acquire a substituted residence. Clearly, the provision for Joan was inadequate and Joan's daughter was worried sick that she could not afford the RAD.

To avoid costly litigation, we negotiated with the Executor's solicitor an amicable resolution where the estate loaned the funds to Joan. Joan also entered a new Will gifting the balance of the loan (if any) back to the estate for extra security. With Joan's precarious financial circumstances, we substantially reduced our costs. However, this would not have been necessary with good estate planning in the first instance. Two options:

1. Mirror wills providing for the children of both prior marriages on the death of the second spouse with a contract of mutual wills. See our May 2015 newsletter for further details.
2. An appropriate right of occupation with the rights to a substituted residence with proper documentation to secure any advance.

- Lindsay Stoddart, Director

*Disclaimer: Information in this newsletter is general in nature and based on current rates/thresholds. Application of this information will depend on your personal circumstances and you must obtain independent advice based on your needs and objectives.*