

# Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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#### Upcoming Estate Planning Seminars

Our Estate Planning seminars will be offered in Sydney and Wollongong. Following the success of our May specialist seminars, Lindsay Stoddart been asked to present under the topic of the essentials of Estate Planning. In addition, Lindsay will give a review of two more recent estate plans.

Acorn Lawyers has once again invited Mr Frank Smith, our visiting presenter, to provide a workshop on "preparing" the clear, concise and ASIC compliant statement of advice.

Wollongong: 8th August 2014  
Sydney: 15th August 2014



## An Introduction to Your Monthly Estate Planning Newsletter from Acorn Lawyers

### Violet and Henry

One of the prominent local financial advisors, Ms Dianne Chalk from Hillross Fairy Meadow contacted me early one Friday morning. Her client's elderly mother, Violet, was upset as her husband of over 60 years, Henry, had suffered a severe stroke and was in a Sydney Hospital. I met Violet in Dianne's boardroom. A review of Henry's Public Trustee Will uncovered probate costs of about \$38,000 (in comparison to the usual Supreme Court estimated scale costs of \$9,000). The Will created capital protected trusts administered by the Public Trustee which would mean further ongoing administrative fees.

I took instructions for Violet's Will and was provided with Henry's instructions to prepare a Testamentary Trust Will for him consistent with his current Will. In the Acorn Lawyers tradition of "clients come first", I left for Sydney at 5pm that evening. On arrival at the hospital, I found that Henry was ill but lucid. I gently took him through the will, explaining his old one and the draft Will. When I finished speaking his previously soft, but firm voice exclaimed; *"That is exactly what I want!"* He signed the Will and was enlivened with his family around him. Henry sadly passed away on Sunday night. Two morals:

1. review your will and not at the last minute; and
2. use a lawyer providing timely service.

Ms Diane Chalk summarises our story this way:

*"Not all solicitors are the same. Meticulous attention to detail Acorn Lawyers provided was well beyond expectation."*

### Gio the Green Grocer and his Vegetative Wife

Gio was in trouble. His health was deteriorating and he was anxious to move into an independent IRT retirement unit. His wife of 40 years had been in a vegetative state for nearly 10 years. Gio and his wife had purchased their home in joint names 15 years earlier. While attending to the purchase, his conveyancer informed him that he did not need an Enduring Power of Attorney (EPOA). His daughter advised him otherwise. 15 years later, Gio is unable to sell

the home to raise the bond for his retirement unit without obtaining a Supreme Court order or being appointed his wife's financial manager by NCAT (Guardianship Tribunal). The first option is costly and there is no certainty in either outcome. Sadly he chose to continue to reside in his home until his wife's death.

*Poor advice results in trouble and difficulty!*

### Superannuation Benefits – Ioppolo & Hesford v Conti [2013] WASC 389

Mr and Mrs Conti were estranged. They retained a Self-Managed Superannuation Fund (SMSF) in which they were sole members and trustees. Mrs Conti made a Will in which she purported to leave her SMSF entitlements to her children. There was even a specific statement in the Will that her husband was not to take her SMSF entitlements. Mrs Conti died without a valid Binding Death Benefit Nomination (BDBN). The SMSF deed stated "in the absence of a binding direction from a deceased member the trustees may in their absolute discretion pay or apply the amount... to a spouse." After Mrs Conti's death, Mr Conti established a corporate trustee as sole trustee of the SMSF and resolved to transfer Mrs Conti's entitlement to himself. The Court upheld Mr Conti's action. The morale:

1. trust benefits pass under the trust deed; and
2. this is a complex area of law, use an experienced estate planning lawyer.

### Next Month – The Reversionary Pension and the Effect of the BDBN

Next month, we will look at this topical aspect of superannuation estate planning in detail. In short, what takes precedence, the Binding Death Benefit Nomination (BDBN) or the reversionary interests?

The answer is not easy as there is not much case law yet, but a number of accountants have raised the issue with me. I will tell you about a conversation with Mr Denis Barlin, a leading superannuation and taxation barrister. In short, much depends on the deed, the facts and the state of the pension as to accumulation or other phase. We will explore this next month.

- Lindsay Stoddart, Director

\*All names changed for privacy.