



Brian Herd



Margaret Arthur

SOLUTIONS
FOR
OLDER
PEOPLE

LookOut

March | 2009

This Issue

- * Family Finances Again
- * Testamentary Terrorists
- * 'Nude Sales'
- * Palliative or Suicidal
- * What is – An Accommodation Bond?
- * Four Legged Children
- * Solicitors Soliciting
- * Down goes the Economy and up goes the Abuse
- * Not the In Laws

Brisbane Office

Level 10

193 North Quay

Brisbane Q 4000

T: 07 3236 2900

F: 07 3236 2907

E: bherd@crhlaw.com.au

W: www.crhlaw.com.au

Rockhampton Office

Level 6

34 East Street

Rockhampton Q 4700

T: 07 4927 2775

F: 07 4921 0611

We also have a visited
office at the Gold Coast

Welcome

Welcome to our new look and latest edition of *LookOut*, a regular newsletter designed to inform you about topical issues affecting you in retirement and beyond.

Family Finances Again

In our last edition we talked about the increasing trend of children financing their elderly parents' needs, for example, in obtaining aged care.

This can often result in the children actually paying the nursing home fees themselves directly from their own funds. The interesting legal question is whether, by doing that, the children effectively become liable to the nursing home to continue to pay the fees.

Legally, the children are not a party to the residential care agreement and they could not be liable under that agreement. Of course, children can be asked to sign a guarantee for their parents' obligations under the agreement and this has been known to happen.

While we have not yet seen it happen here, in America it is not inconceivable that a clever lawyer might suggest that by paying a parent's nursing home fees with their own money, a child has voluntarily assumed responsibility for those fees. The lawyer might argue as well that the child made an oral promise to pay and the fact they did pay is evidence of that promise.

There is no doubt that, as houses get harder to sell, children may be called upon more and more to assist mum or dad in meeting these aged care costs.

Very few children plan for this contingency. In our experience, a failure to do so may result in a financial crisis afflicting not only the parents but the children themselves who are then placed in the classic squeezebox effect of having to support their own families and their parents.

Testamentary Terrorists

It is not uncommon for people to want to put a special clause in their Will which, in effect says that, if any beneficiary should challenge their Will because the beneficiary thinks they have not received enough, they will be totally disinherited and will not receive a thing.

These clauses are known as "*in terrorem*" clauses which are intended to terrify people from contesting a Will.

The short answer is that these types of clauses are ineffective in achieving that goal. As also is a provision which, for example, gives \$1.00 to a particular beneficiary in the mistaken belief that, because you have given them something, they cannot challenge your Will.

The law at the moment is that there is virtually nothing you can do to prevent an eligible person from contesting your Will. All you can do are various things to reduce their prospects of successfully challenging your Will.

'Nude Sales'

According to an Alanat news report, the worst recession in generations has led to some creative techniques for older people in Italy and France for dealing with their homes.

It seems the recession is so emasculating the wealth of elderly Italians, they are now doing what they have never done before – selling their family home to strangers at a discount on the condition that they can stay on until they die.

They are called 'nude sales' because the elderly are stripped of their ownership while retaining use of the property until death do they part.

In France it is known as 'en viager' and comes with a slightly different theme – the purchaser pays a monthly charge to the elderly owner while the owner continues to live in the home and uses the money to supplement their income.



Palliative or Suicidal

We all probably know that assisting someone to commit suicide is a criminal offence. We also know that palliative care, which is legal, can hasten the death of someone.

So where does the law draw the line?

The Queensland Criminal Code says that, even if it hastens a person's death, palliative care does not constitute assisting suicide where:

- It is provided in good faith and with reasonable care and skill; and
- It is reasonable having regard to the person's state, the circumstances and good medical practice.

If good palliative care is important to you, maybe it's time for you to complete an Advance Health Directive.

What is – An Accommodation Bond?

It is, generally, a lump sum of money that you may be required to pay to an aged care facility to take up a low care place in a hostel or an extra service place in a nursing home. The biggest Bond I have ever seen was \$900,000.00.

It doesn't have to be paid in a lump sum but can be paid periodically.

As with anything, before deciding on how to pay a Bond, get some good advice as it can significantly affect your financial position.

Four Legged Children

When we see clients to prepare their Wills, we normally have a series of standard questions we ask them about their affairs and what their wishes might be.

Recently, a solicitor saw an elderly woman who had no spouse, significant assets and no children. Attempts by the solicitor to have the lady nominate who she wished to give her estate to were met with a coy avoidance by the woman. Ultimately, when pressed, she revealed she had six horses, five dogs and 2 cats. Not only that, she wanted to leave her entire estate to them.

It is possible to have a Will which provides for the benefit of animals but it must be done in a particular way. There are also a significant number of elderly people who do not want to leave their estates to their children and look for alternative beneficiaries who they may see as more deserving.

Needless to say, our standard questions now include asking clients whether they want to provide for their animals in their Will.

Solicitors Soliciting!

Beware of solicitors soliciting to be your Enduring Power of Attorney. Some people think that, when they come to complete their Enduring Power of Attorney, they should appoint their solicitor because he or she is an 'attorney' aren't they?

Be careful about appointing your solicitor as your Enduring Attorney because they will more than likely charge to perform this role if they have to. It is best to look for other people that you know and trust to perform this role before nominating your solicitor. We are certainly reluctant to take on this role unless there is no alternative.

Down goes the Economy and up goes the Abuse

We expect that, as the economy declines further and more and more people come under financial stress, there may well be an increase in the incidence of elder abuse especially in the misuse of Enduring Powers of Attorney.

As some people see their power as an Enduring Attorney like a blank cheque, the current economic malaise may increase their temptation.

It pays to be vigilant in these straightened times.

Not the In laws

Many parents quietly mention to me when making their Will that the last person they would want to end up with their money is their daughter or son in law.

Trouble is, if any of your children are involved in a marriage break up and matrimonial property proceedings, the Family Court, when determining the division of property between your child and their ex spouse, has the ability to take into account either your child's share of your estate when you die or, even worse, the mere expectation that they may receive a benefit from your estate.

If this is a genuine and real fear, there are things you can do to address it.

Regards,



Brian Herd