



## Elder Law

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## Welcome

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

## Reverse Giving

A common legal scenario we are often asked to advise older clients about concerns their gifting or lending of money to their children. This can have hairs all over it in terms of legal implications, the effect on the person's Will, not to mention Centrelink imbrolios.

We are being increasingly being called upon to advise in the reverse situation - where adult children provide financial assistance to their parents especially in meeting their age care obligations.

Such scenarios we have seen include:

- An adult child lending money to a parent to pay their accommodation bond in a low care age care facility;
- Members of the family buying their parents home to finance age care needs;
- An adult child providing a personal guarantee to an aged care facility for their parent's obligation for daily fees;
- Adult children meeting every day home and living expenses of their parents
- Even children paying a regular amount of money to a parent to supplement their pension.

It goes without saying that such scenarios can lead to all sorts of legal and family tensions especially if only some of the children are involved.

What is also significant in these arrangements is the effect they have on a person's age pension.

As you may know, you have to declare all income you receive to Centrelink so that it can ensure you are receiving the correct pension. How do the arrangements above then affect that obligation?

It all comes down to the definition of 'income' for Centrelink purposes as to whether financial assistance provided by children to their parents needs to be declared.

Some forms of financial assistance can avoid the strictures of the Centrelink rules. There is no space in this edition to discuss this in any more detail but I would strongly advise you that, if you are involved in any of these sorts of scenarios, you seek our advice as to where you stand with Centrelink.

It won't thrill you to know that we recently acted for an 83 year old widow who was required to repay some \$86,000.00 to Centrelink as a result of failing to declare certain information.

## Negative Inheritance

This is the ultimate 'gift' you can leave to the children if you regard them as the proverbial ingrates.

In a family where the interest of the 4 children in the affairs of their dying mother was only activated by their anticipation of the forthcoming event, the mother promptly and surreptitiously arranged to give away all her assets to 3 charities while she was still alive and reclining in her hospital bed.

Not only that, she intentionally incurred significant debts on her 2 credit cards which she had no intention of paying and which remained unpaid on her death.

She had dutifully made a Will appointing her 4 children as the Executors and giving her entire estate to them. This respectable publication does not permit me to recount the words uttered by the children on discovering the ploy but, if you are ever the Executor of a bankrupt estate, you might well be able to imagine!

## An End of an Era

For those of you grappling with the intricacies of our age care system, you may know that there are essentially 2 types of residential aged care - high care for people who need 24 hour care and low care for people who have some independence.

It would seem from the Government's recent introduction of a new system of assessing people's aged care needs, that there will be significantly fewer people being assessed for low care.

This probably reflects the Government's prevailing philosophy to have as many people as possible stay in their own home and receive community care and only resort to residential age care when there is no realistic alternative.

While this sounds fine in theory, it may have a serious consequence in finding a high care place when it is needed in the future. This is because many aged care providers depend to a large extent on accommodation bonds paid by residents in low care to fund their high care facilities where accommodation bonds are not payable.

I anticipate that this trend will place increasing pressure and strains on families in the future to find ways for mum or dad to stay at home when perhaps they would have appreciated the option of a low care facility.

## What is - Intestacy?

It means dying without a valid Will.

If you do, the law prescribes what happens to your estate namely, generally speaking:

- If you leave a spouse, they will receive the first \$150,000 of your estate and the 'household chattels' - the pots and the pans and the knives and the forks
- The rest of the estate will be split equally between the spouse and the children
- If you die without a spouse, your estate will go equally to the children
- If you die without a spouse or children - ring me and I will tell you the answer.

## Death and Destruction

I am often asked what a person should do with a previous Will where they have made a new one replacing it

That is a very personal decision - so personal we will not under any circumstances destroy a Will for a client- we will insist they do it themselves. Why?

Because if their latest Will is found to be invalid, the law prescribes that you go back to the

previous Will they made to find their last valid Will.

## Doing a 'Pauline Hanson'

If there is likely to be a challenge to a person's Will, we sometimes recommend they do a Statement of Wishes with their Will in which they set out why they have done their Will in the way they have.

In America, some people are now using technology to make these Statements by recording themselves on a DVD which can be played back to a Court long after the person has experienced their celestial transfer.

It is a bit like that infamous DVD made by Pauline Hanson some years ago where she was recorded at the commencement of the video saying words to the effect, "If you are seeing me now, I am dead!"

## Here's a Test

What's the difference between an Executor and an Enduring Power of Attorney?

The answer - lots.

An executor is a person who administers your estate when you die.

An enduring attorney is someone who administers your affairs when you are alive but have lost your capacity to make your own decisions.

When you die, so does the power of your Enduring Attorney. Yet it is amazing how many people will still try to use their enduring power of attorney even after the person who appointed them has died. Even banks sometimes let them!

## Jumping Generations

Giving everything (or even some of it) in your Will to your grandchildren can seem like a sensible idea especially where your own children are financially secure.

Beware however - you could be setting up a legal stoush later on where your children can challenge your Will. Even rich children are entitled to challenge.

What's worse is that you then set up a conflict between a parent and their children. We were involved in a legal fight between a mother and her 4 year old child in this very situation!

Think before you jump.

Regards,



Brian Herd