



## Elder Law

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### IN THIS ISSUE:

- ❖ Welcome
- ❖ Doing Nothing
- ❖ Too old to Divorce
- ❖ Dear oh dear oh dear
- ❖ Now where did I put it?
- ❖ The Age Friendly Market
- ❖ Ruling from Heaven
- ❖ What is - Joint tenants & tenants in common

## Welcome

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

## Doing Nothing

I have recently added another presentation topic to my public speaking armoury entitled "*Doing Nothing*".

It addresses the favourite Australian pastime of not confronting but, rather, avoiding the future. There is a saying, "*Australians will always do the right thing once they have exhausted all other possibilities.*"

One possibility we pursue relentlessly is the possibility of doing nothing. Paul Keating once famously described the former prime minister of Malaysia as a recalcitrant. He could have just as easily described many Australians the same way.

Take the example of not doing a Will. In that event, the law prescribes who gets what from your estate when you die. Specifically, it says your spouse gets the first \$150,000.00 of your estate and the 'household chattels'. The rest of your estate is split equally with your spouse and your children.

It doesn't take an Einstein to work out the imbroglgio this could cause for a family if the first spouse dies without a Will and with more than \$150,000.00 in their estate and the children demand their share.

A lot of what I do, I do because people don't do what they should do. Doing nothing is good for my business but bad for you and your family. While I am, by all accounts, a nice guy, who would you rather benefit me or your family?

May be it's time to say "*It's time.*"

## Too Old to Divorce?

Here is some free advice - you are never too old to divorce.

Despite that fact, we are seeing an increasing number of older generation couples who have been married for years, have lost their love and decide to separate.

Despite the separation, they seem to have no wish or will to formalise the separation by taking the next step and divorcing and agreeing on a property settlement.

Not only that, they tend not to do anything about changing their Will, their Enduring Power of Attorney or even their Superannuation Death Benefit Nomination.

This can be a major complication in itself when one of them dies but it can be a disaster if one of them re-partners and does not address these issues and the effect on their first marriage and their children.

I am not suggesting that everyone who separates should get divorced but simply that you need to understand the implications.

Some of them are:

- When one spouse dies, and no family law property proceedings have begun, the estranged spouse has no right to seek a property settlement against the deceased spouse's estate.
- If the former matrimonial home remains in joint names and one of the spouses dies, the estranged spouse will become the sole owner of the home.
- If the deceased spouse has made a binding death benefit nomination nominating his estranged spouse to receive it, they will, and there is nothing that anyone can do about it.

## Dear oh Dear oh Dear

It is always comforting to know when clients come to see me about their affairs, that some are able to tell me that they have in place an Enduring Power of Attorney.

This comfort turns quickly to despair when I happen to read the document in which they have appointed their enduring attorneys. It is quite astonishing how many husbands and wives appoint their children as their enduring attorneys and overlook to appoint each other! So just picture it - you lose your capacity to make your own decisions and guess who can make them for you - not your spouse but your children.

It is important to understand that unless you have appointed your spouse as your Enduring Power of Attorney, they have no legal power to make financial decisions for you. Check your Enduring Power of Attorney (if you know where it is!).

## Now, where did I put it?

Despite the advance of technology and the 'virtual' nature of many documents that are stored electronically, the law still has an obsession with original, signed, hard copy documents.

If, for example, you have made a Will or Enduring Power of Attorney but the originals can't be found, you have a problem. For all intents and purposes, in this situation, you may as well assume you have never made the documents with all the consequences that that has.

Not only should you be scrupulous about where you keep the originals of important documents, you should have some way of knowing where that is. We keep original documents for clients (for no charge) and give the client a card for insertion in their wallet or purse which tells them what documents we are holding for them. That way, you not only know what documents you have signed but where they are.

## The Age Friendly Market

I remember reading some years ago about a shop that opened in Sydney which sold items just for left-handed people. Marketers now seem to be realising the discrete interests of older people when it comes to shopping

Tesco, one of the biggest grocery retailers in the UK, has recently revamped a supermarket there which it describes as pensioner friendly.

Concern has existed for some time about how unfriendly grocery stores are for older people from shelves that are too high to some that are too low.

The new store now features:

- Light and smaller trolleys
- Magnifying glasses on shelves
- Quiet not head banging background music
- Bigger signs

Apparently sales have increased by some 29% since the changes were introduced.

## Ruling from Heaven

Some people will go to creative lengths to control their family from heaven or wherever.

A woman in America made a Will in which she said that if any of her grandchildren married outside the Jewish faith, they would be deemed to have died before her, meaning they would not inherit.

The court in Illinois declared that such a provision was invalid. More than likely so would a court in Queensland as it recently did when it held invalid a clause in a Will which said that the deceased's daughter could only inherit if she was not married to her husband.

## What is? - Joint Tenancy and Tenancy in Common

These concepts and their different legal effect are crucial to understand when considering your celestial transfer.

The failure to understand or, more importantly, to do something about it can lead to disastrous consequences for a family.

A woman in her second marriage had paid most of the money for the purchase of a home with her second husband and yet they were both recorded as owning the property as joint tenants on the Title Deed.

She then made a Will purporting to give her interest in the home to the children from her first marriage. She then died and the children were in for a rude shock. As their mother owned the home as a joint tenant with her second husband, he became the sole owner of the home and the woman's Will was ineffective in giving her interest in the home to her children.

The tragedy of this case is that she was advised to change the ownership from joint tenants to tenants in common but, as regrettably happens too often, she did nothing and that's what her children received as a consequence.

Regards,



Brian Herd