



# Estate Planning Tasmania News

Issue 21 January 2011

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*Make this year the year to review your estate planning*



## Joint Ownership of Assets

### What happens to my assets that I hold as a joint tenant when I die?

Co-owned or jointly held assets – that is, assets that you own with another person – pose interesting problems for a Willmaker. At the core of this problem are the rules of co-ownership which provide that where you own an asset as a joint tenant, your share of that asset will pass directly to the other joint tenant when you die and not form part of your estate, regardless of what is written in your will.

There are a number of assets that people commonly hold in a joint tenancy arrangement:

real estate;  
bank accounts; and  
shares.

Real estate can be held as tenants in common or joint tenants. The form of ownership will be shown on the title. The form of ownership of real estate can be changed. If the form of ownership is a joint tenancy the real estate will pass to the surviving joint tenant (usually a spouse).

Where a bank account is held jointly by two joint tenants the survivor of those two account holders will be entitled to the balance. There are some exceptions to this where the survivor is deemed to be the trustee of the deceased joint account holder's share of the account. An example of this is where only one of the joint account holders has contributed money to the account. Usually, in the instance of bank accounts it will come down to the intention of the Willmaker or the circumstances of the trust being created.

Shares held jointly will be treated as though the parties are joint tenants unless a contrary intention can be shown. As a consequence, when one of the joint tenants dies, the shares will become the assets of the surviving joint tenant. A method of overcoming this is to create either tenants in common in equal shares, or tenants in common in unequal shares, by special documentation or declarations.

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## Will Tips

- Seek advice about whether you need to complete any binding or non-binding directions to your superannuation fund about the payment of death benefits.
- Leave notes with your Will about all matters that the Executor of the Will will need to attend to. For example, provide details of all bank accounts, safety deposit boxes, and contact details of all relevant people.
- Keep your original Will safe. Consider storing it in safe custody with your lawyer or financial institution.

## Recent/Pending Legislation & Cases

- The *Intestacy Act 2010* (Tasmania) commenced on 1 January 2010. The *Intestacy Act* repealed part V of the *Administration and Probate Act 1935* (Tasmania). The *Intestacy Act* has introduced significant changes to intestacy law in Tasmania.

## Our Firm News

- Kate Smith married in December 2010 and is now Kate Hanslow.
- Kate Hanslow has been appointed a Senior Associate of the firm.
- Sarah Slade will join the firm on 31 January 2011 as a Senior Associate Lawyer working in the Commercial Practice Group.
- Hayley Mitchell, a law and legal practice graduate, has been employed as an assistant to Kate Moss, working in our growing probate and estate practice area.

## Asked and Answered:

**Q. I'm 19 years old, I don't own a house (or anything else of any value to give anyone when I die!), and I don't have any children – why would I need a Will?**

**A.** This is the situation for a lot of young people, especially with those who go onto further study at university and delay entry into the workforce. Whilst you say you do not have assets to deal with when you die, confirming your wishes (including funeral wishes, and gifts of personal items) can give comfort to those close to you, and make the administration of your estate more straightforward (and therefore usually cheaper). You also need to remember that whilst you may not have built up significant superannuation funds, often there is an insurance component to a super fund, meaning that there may be substantial funds (called a "death benefit") to distribute on death. So the probability is you probably do have assets that warrant the need for a Will, and Estate Planning advice.



Kate Hanslow



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## Extension of deductible gift recipient regime

The Commonwealth Government has a Deductible Gift Recipient (DGR) regime that applies to certain organisations which are either endorsed by the Tax Office or listed in tax law. An organisation that is an entitled DGR is able to receive income tax deductible gifts. Some private ancillary funds will also fall under this category.

A DGR entity may have one of two types of endorsement:

1. where the DGR has received an endorsement for all its activities; or
2. where elements of the entity are individually endorsed and only gifts to those elements are eligible as being tax deductible.

The DGR regime has recently been extended to apply to: volunteer fire brigades, other State based volunteer emergency service entities and the Government bodies that co-ordinate those entities.

The practical effect of this extension is that gifts to volunteer emergency service entities and volunteer emergency service co-ordination bodies will now be tax deductible.

**Jane Worrall**

## Glossary

### Same Sex Relationship

Where two people who are of the same sex have a relationship which is of a domestic and committed relationship similar to one which, if they were of different sexes to each other, would be considered in the community as a marriage like relationship. Where the relationship is different to this, for example where one person is the carer of another person, the relationship needs to be distinguished for Estate Planning purposes.

### Sibling

A person who has a brother or sister might refer to that brother or sister as their sibling.

### Spendthrift

A person with tendencies showing an incapacity to control their own finances, or long term wealth, in a productive way.

## The lighter side of Wills

A character witness was called. He gave his name.

**Q.:** Your occupation?

**A.:** Retired .... gentleman.

**His Honour:** What were you before you were a gentleman?

Coram Judge Lazarus  
November 1984

## A note from our Commercial Practice Group - Understanding Ownership Structures

A common problem we find when dealing with Commercial and Property Law matters is that parties are not correctly identified. This issue flows from a misunderstanding of what entities assets are held in, which is compounded where clients have multiple entities using similar names. It is important for commercial transactions and estate planning purposes that you understand what assets are held by which entities, and who controls those entities. We recently had an example where the client believed a property was held in one family trust when it was actually held in a second family trust. In order for the client to undertake a particular transaction, it was necessary to change the entity and that task alone cost the client approximately \$15,000.00 in Government duty and other fees and legal costs. Conversely, we recently met with a client, with her accountant, to undertake a full review of all assets and entities owned, so that the client had a clear understanding of her asset ownership position. This has enabled her to move forward confidently with a large commercial leasing transaction and business sale.



**Matthew Pawson**



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## Joint Ownership of Assets (continued)

It is important to note that there is more than one way to hold property jointly. Property can be held in a joint tenancy (noted above) or as tenants in common. By changing the way in which the assets are held by you and the other co-owner you can change whether your "half" or your "share" of the assets can form part of your willable estate.

When you commence your estate planning or undertake a review of your estate planning, it is important to know how your assets are held. This is because how your assets are held affects whether those assets can form part of your willable estate if you are the first to die; and the extent of your estate if you are the second to die.

### Jane Worrall

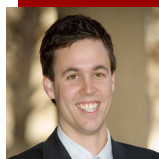
Jane Worrall was employed as a graduate law clerk with Peter Worrall Lawyers. Jane has most recently been working as a legal intern to a Judge in the pre-trial chamber at the United Nations/Cambodian Khmer Rouge trials, and has now moved to Canberra to commence employment in a Government Department.

### Our Estate Practice Group contacts



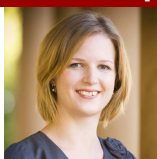
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## Further Information

**Our Website:** A wealth of information in relation to estate and commercial matters can be found at our website [www.pwl.com.au](http://www.pwl.com.au)

**Contributions:** Contributions and suggestions from Estate Planning News readers are always appreciated. Email us at [sam@pwl.com.au](mailto:sam@pwl.com.au)

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