



Estate Planning Tasmania News

Issue 29 September 2012

Special Edition

Arrangements Following the Death of a Spouse

The death of a spouse is an emotional time, and a proper time for mourning and reflection. It will also bring with it a number of matters that need to be addressed. From an estate administration perspective, it is important to understand that, depending on your circumstances, dealing with your spouse's estate may be an involved and lengthy process.

An article recently published in a Tasmanian based newspaper provided some information and advice about what to do when your spouse dies. In our opinion, the article contained some statements that could properly be described as "folk lore" and some guidance that does not apply in Tasmania. This **Special Edition of Estate Planning Tasmania News** has been prepared in response to that publication, and is aimed to provide you with accurate information and guidance about some of the arrangements that are to be made following the death of a spouse.

Jointly Held Assets

When obtaining advice about the assets of your spouse's estate, one of the first matters to determine is what assets will actually form part of the estate. The assets held in your spouse's sole name will form part of their estate. However, jointly owned assets will only form part of your spouse's estate if they are assets held by you and your spouse as tenants in common, as opposed to assets held as joint tenants.

The ownership of assets owned jointly with your spouse as joint tenants will automatically pass to you as the surviving owner. You will still need to make arrangements to have the asset transferred into your sole name and notify the relevant third party institutions of your spouse's death, but the transfer does not occur because of the provision of your spouse's Will: it happens because of the form of ownership.

Where you and your spouse own assets as tenants in common (in equal or unequal shares), your spouse's share of that asset will form part of their estate, and will be distributed in accordance with their Will or the intestacy provisions. Your share in the property remains unaffected by the death.

Position of Executor

Whilst the Executor (which may, or may not be you) is responsible for administering your spouse's estate, it will be a combination of the Executor, the beneficiaries, your lawyers, your professional advisors and third party institutions that will determine the efficiency and timeliness in which the estate is administered and finalised, as well as the personal circumstances of your spouse. An Executor has an onerous task, and it is important to realise that an Executor cannot always control the time in which the estate administration is finalised, or control the issues that may arise.

It is important that there is good communication between the people who are involved in the administration of the estate.

Seek Legal Advice

Whether your spouse had a Will, or not, it is important to seek legal advice after the death of your spouse.

Your estate lawyer will advise you about whether or not the Executor will need to apply to the Supreme Court for a Grant of Probate (in the case where there is a Will) or Letters of Administration (where there is no Will, or when there is a Will that does not properly appoint an Executor). Often there will be issues that you are not aware of, and your estate lawyer, after making an appropriate review of your spouse's circumstances, can provide you with proper legal advice.



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Advising Third Parties

By "third parties" we mean financial institutions, superannuation fund managers, fund managers, your spouse's employer and government departments. This list is, of course, not exhaustive.

The advisors and financial institutions that your spouse was involved with during life will need to be notified of the death. You, as the spouse, are in a position to do this. However, if you are not an Executor, there will be some matters where the third parties can only deal with the Executor. Notifying the third parties is just the first step of the process.

Depending on the circumstances of the estate, there will be a number of things that will need to be done to satisfy the third parties' requirements to close or otherwise deal with the asset or liability. Simply notifying a third party of the death of your spouse will not ensure that investments, accounts held with financial institutions or taxes are properly dealt with. In many cases, you need to seek professional legal advice to ensure that the correct procedures are being followed.

Record of Death

You will need to obtain an original Record of Death. Sometimes this is obtained from the State Government through the Funeral Director, although you or your estate lawyer can also obtain the document. However, only one copy of the Record of Death is usually required. A lawyer or Justice of the Peace can certify copies of the Record of Death, and the certified copies can then be provided to third parties when required in order to assist with the administration of the estate.

Keep the original Record of Death, and either give it to your lawyer for safe keeping, or store it in a safe place. If a grant of representation from the Supreme Court is required to administer the estate, then the original Record of Death will need to be lodged with the application to the Supreme Court.

Superannuation and Life Insurance

If the deceased held superannuation or had the benefit of life insurance, the death benefits will not necessarily be paid to the estate, and may be paid to a person in their personal capacity. The relationship of the person receiving the death benefit to the deceased will determine how the death benefit is taxed.

There are a number of factors that need to be considered when dealing with superannuation and life insurance, and each set of circumstances will be different. To ensure that you gain the maximum benefit of your spouse's superannuation and/or life insurance, you should seek proper legal and financial advice.

Power of Attorney and Enduring Guardian

If you, or another person, were appointed as an Attorney under a Power of Attorney and/or as a Guardian under an instrument appointing an Enduring Guardian, then you need to be aware that the respective powers of an Attorney and a Guardian cease on the death of the donor of those powers (in this case your spouse).

Thus, an Attorney does not have the power to deal with your spouse's estate once they have died. The responsibility in relation to your spouse's estate becomes that of your spouse's Executor appointed by their Will.



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Timing

The article published in the Tasmanian based newspaper focused on what you should or need to do when your spouse dies. However, most of the matters contained in this Special Edition can also be applied to the "here and now."

It is important to consider that some of these matters can be reviewed before death. Do not wait for the death of a spouse or family member to trigger good estate planning. Good estate planning before death can provide for a more efficient finalisation of an estate, which will reduce the time and emotion that you need to devote to it.

Sourcing Information

Sourcing and relying on information from a column in a current newspaper, magazine, or from the internet can be dangerous. These sources do not take into account your personal circumstances, and are no substitute for expert and professional legal advice.

Further Information

Further information about the administration of estates can be found on our website: www.pwl.com.au

If you would like to speak to us about any of the issues raised in this **Special Edition of Estate Planning Tasmania News**, or would like our advice about the administration of an estate, please do not hesitate to contact us by telephone on 62 23 88 99 or email Kate Moss at kate.moss@pwl.com.au or email Hayley Mitchell at hayley.mitchell@pwl.com.au.

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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

Contributions: Contributions and suggestions from Estate Planning News readers are always appreciated. Email us at sam.mccullough@pwl.com.au

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