

Estate Planning Tasmania News

Issue 59 | December 2017



Expert advice
and solutions.



W O R R A L L
L A W Y E R S

In this issue:

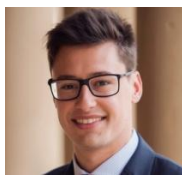
- Peter Worrall presented a paper at the European Legal Conferences London Succession Law Conference 2017
- Kimberley Martin recounts her detailed presentation about agri-business succession planning to the Tax Institute
- Donna Woodleigh summarises *Parker v Parker (2017)*, where a family farm was put at risk due to inadequate agri-business succession and estate planning

Welcome to Our New Lawyers

We have appointed four new lawyers.



Donna Woodleigh
Associate



Alex Cordova
Lawyer



Cameron Topfer
Lawyer



Imogen Cook
Lawyer

Donna Woodleigh B.A. (Hons) LL.B., Associate Lawyer, is working principally with Sam McCullough in Estate & Trust Disputes, and in Family and Relationship Law.

Alex Cordova, B.Bus. LL.B., Lawyer, has also joined the Estate & Trust Disputes and Family and Relationship Law practice areas.

Cameron Topfer, B.Bus. LL.B. (Hons), Lawyer, works both with Peter Worrall and David Bailey in Commercial & Property Law, and with Kate Moss in Estate & Trust Administration.

Imogen Cook, B.Bus. LL.B. (Hons), Lawyer, works principally with Peter Worrall and Kimberley Martin in the Estate Planning practice area.

European Legal Conferences - London Succession Law Conference 2017

Peter Worrall, a Director of Worrall Lawyers, delivered a paper at the 2017 London Succession Law Conference on 6 September 2017 to over 40 senior trust and estate professionals, including two retired Probate Judges from interstate Supreme Courts, one current Judge from the Queensland Supreme Court, and a number of Queen's Counsel and Senior Counsel.



Peter Worrall
Director
Notary Public

Peter's presentation included

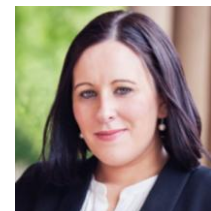
- a detailed analysis of a lawyer's role as the custodian and caretaker of a client's testamentary intentions
- where conflict between lawyers who prepare Wills, and beneficiaries who stand to benefit from Wills, can arise. And Will drafting techniques to minimise both that conflict and the vulnerability of an estate to Testator's Family Maintenance Act (family provision) claims, and other claims by disappointed beneficiaries
- the details and information to obtain from clients in order to prepare a Will that distributes an estate in accordance with a client's intention, and the level of advice that clients, even clients requesting a "simple Will", must be given in order to understand the effect or possible effect of their Will

The invitation to speak at this conference was the result of Peter's experience and knowledge of Estate Planning law and techniques. Worrall Lawyers congratulates Peter for this significant achievement in delivering this conference paper to his international peers.

For more details on the conference, or to purchase **Peter Worrall's** paper, contact him [here](#).

Tax Institute Seminar Presentation – Agri-business Succession Planning

On 20 October 2017, **Kimberley Martin** presented a seminar (and paper) about agri-business succession planning for the Tasmanian Convention of the Tax Institute at the Country Club Tasmania, Launceston. The following is a brief summary of Kimberley's seminar and paper.



Kimberley Martin
Senior Associate

"Agri-business succession planning" is about planning and preparing for, and attempting to control, the handover of a business when, or if, certain events occur.

It is never too early to start discussing succession planning, and although it is not an easy discussion to have, it should not be left until an "event" like a separation, divorce, disability, or death occurs. Remember, succession of a business is not a matter of "if". It is a matter of "when" and "how".

Although each family and each business is unique, and no single approach can be undertaken in succession planning, the following can be used as a guide to facilitate the process. This guide is not comprehensive, and the process may vary for each client.

1. **Seek advice from a team of advisors.** One advisor alone cannot always successfully develop and implement an appropriate succession plan. Ideally, succession planning will involve a team that includes an estate planning and succession lawyer, an accountant and a financial planner.
2. **Open lines of communication.** The business owner (or controller) must start a discussion with their successor/s (likely the next generation of their family), as well as any business partners. Our advice is not to exclude anyone from these discussions regardless of their plans to be involved with the business in the future.
3. **Define personal, family, and business goals and expectations.** Openly establish the individual goals and expectations of the business owner (or controller), and the successor/s, for themselves, their family and the business.
4. **Collect and analyse information.** It is vital everyone involved has, or acquires, a general understanding about the current structure or structures of the business. This may require obtaining advice and explanation about the current business structure. Everyone involved must understand what 'succession planning' and 'estate planning' are, and any folklore or misinformation must be corrected.
5. **Generate options.** The team of advisors should be utilised to assist the business owner (or controller) and their successor/s to generate options for succession. These options must take into account and address: the different "what if" scenarios; the different methods of transferring ownership of all or part of the business; the different tax and duty concessions and exemptions that may be available; and comprehensive estate planning.
6. **Make preliminary decisions.** After assessing each of the options, the business owner (or controller) and their successor/s need to make preliminary decisions about the most suitable options. It is vital that the team of advisors provide input, comments and suggestions regarding the various options and decisions, and recommend timeframes for taking action.
7. **Design, develop, write and review.** Once the business owner (or controller) and their successor/s have made preliminary decisions, the next step is to prepare a draft written succession plan. Worrall Lawyers can assist in developing a comprehensive business succession plan suitable to each client's individual, family and business needs.
8. **Implement and monitor.** Once a plan has been developed, it must be implemented, and progress of the succession plan monitored. The plan should be reviewed each time there is a major life event, and at least every 3 to 5 years (if not more frequently). If issues arise, the succession plan may need to be modified. Flexibility is the key.

Worrall Lawyers has highly trained lawyers with expertise and experience in succession planning who can assist their clients all of these steps.

To arrange a confidential discussion with **Kimberley Martin** about succession and estate planning, or to purchase her comprehensive paper, contact her [here](#).

Parker v Parker [2017] TASSC 37 and Identifying the Assets of Farming Partnerships

The recent Tasmanian estate dispute case of *Parker v Parker*, decided in June 2017, emphasises the importance of a well-drafted Will in stating a person's wishes on their death.

If you die 'intestate' (the legal term for dying without a valid Will), the laws of intestacy determine how your property will be distributed. This government mandated process for people who die without a Will is unlikely to be in accordance with your wishes.



Donna Woodleigh
Associate

In *Parker*, the father (who died intestate) was part of a farming partnership with one of his two sons, and not the second son. Both sons had an interest in their father's property under the intestacy laws in Tasmania, and following the father's death a dispute arose about ownership of an asset of the farming partnership (the farm).

The farming son claimed that his father had intended to give him sole ownership of the farm, because before he died his father had transferred to him the title of the property. However, the Court found that the father had not had sufficient interest in the property, which had been owned by the farming partnership, to transfer the title to the farming son alone.

The Court held that there was no clearly expressed intention to change the status of the property from an asset of the partnership, to an asset of the farming son, and remained an asset of the partnership at the time the father died. Ultimately, the partnership assets were liquidated to divide the father's estate between the two sons.

Without a Will clearly stating what was to happen to the farm, and with the sons not able to agree, they both depleted the estate with the legal costs of a Supreme Court trial. This litigation could have been avoided if the father had signed a well drafted Will, taking into account the circumstances of the farming partnership.

Worrall Lawyers' experienced estate planning and estate litigation lawyers can assist you by

- advising you on how best to distribute your assets, taking into account tax issues as well as minimising the risk of estate litigation after you have died
- drafting a Will that clearly, and effectively, reflects your wishes
- providing comprehensive advice and legal assistance if your family member has died without a Will

To arrange a confidential discussion with **Donna Woodleigh** about Will disputes, or with **Peter Worrall** or **Kimberley Martin** about estate planning for farming and asset owning families, contact them [here](#).

Coming Up

In our next edition of Estate Planning Tasmania News

- Sam McCullough and Alex Cordova explain the changes that allow stepchildren to claim against their stepparent's estate, even when their biological parent died first
- Peter Worrall points out the dangers of "home made Wills" and "Will kits"

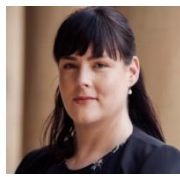
Our Lawyers



Sam McCullough
Director



Peter Worrall
Director



Kate Moss
Senior Associate



Kimberley Martin
Senior Associate



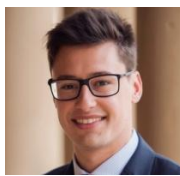
Kate Hanslow
Senior Associate



David Bailey
Associate



Donna Woodleigh
Associate



Alex Cordova
Lawyer



Cameron Topfer
Lawyer



Imogen Cook
Lawyer

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 donna.woodleigh@pwl.com.au

Caution:

This newsletter contains material for general educational purposes and is not designed to be advice to any particular person in relation to their own affairs as it does not take into account the circumstances of the reader as an individual. We strongly recommend that readers only rely on appropriate professional advice that has been obtained in their individual circumstances.

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Our office closes at 1.00pm on Friday 22 December 2017 for the Christmas/ New Year period.
We re-open at 9.00am on Monday 8 January 2018.

All of us at Worrall Lawyers extend to you the
Compliments of the Season.
