

Thinking property



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Thinking Family & Estate Planning with Jane Pfister (Solicitor)



THINKING FAMILY & ESTATE PLANNING

With the warmer weather, many new properties are being placed on the market. Couples who intend to owner occupy as well as those who intend to invest are looking to increase their property portfolio.

Couples who plan to purchase together with both names on the certificate of title will need to consider whether or not the purchase is to be made as joint tenants or as tenants in common. A purchase as tenants in common can be made in equal shares or any other percentage nominated by the couple to reflect their contribution. A purchase made as joint tenants is owned equally by both parties and automatically transfers to the surviving spouse should one spouse predecease the other.

Couples who are looking to purchase property as owner occupiers for a second or subsequent marriage will need to consider the implications of property purchases and the choice of tenancy on the title when considering their estate planning.

As marriage revokes any former will, it is essential, if you have recently remarried or if you are currently contemplating a second or subsequent marriage, that you instruct your solicitor to draft a new will or perhaps a will with a testamentary trust.

For couples with children from previous marriages, it may be important to ensure that you are able to draft a document that has provision for your current spouse to remain in the house that you occupied together while ensuring that the children of your previous marriage will be adequately provided for as beneficiaries of your estate.

Before making your will, it will be prudent to consider your changed circumstances in relation to property ownership, financial and taxation implications, and testamentary intentions. With new circumstances including blended families it will be important to define who are to be the beneficiaries and to what proportion and what needs have been created. It will also be particularly important to decide upon who would be best suited to be appointed as your

executor, executrix or trustee.

As such any new property purchases and the implications of the title need to be considered and discussed with each other and your solicitor to ensure that you have the peace of mind that your testamentary intentions will be upheld after you die.

For those contemplating second or subsequent marriage it is also essential for those with an industry superannuation fund to check who is the beneficiary you have nominated as the beneficiary and if a Binding Death Benefit Nomination is appropriate. This is useful to check and ensure that an ex-spouse is no longer the nominee, if this is no longer your intention.

There are specific rules for superannuation policy beneficiaries and it will be important to review your policy and discuss it with your solicitor and financial planner in the event of a second or subsequent marriage. This benefit may be paid to a spouse, a child, (natural, adopted or a stepchild) or a person who had an interdependent relationship with the superannuation policy member. A nomination may also be made to your estate and determined pursuant to the content of your will. These nominations will only be binding if legally valid. Some forms of nominations may lapse and need to be renewed every three years.

If either spouse has a life insurance policy it will also be important to update the details of any beneficiary. Although these policies allow the funds to pass directly to the intended beneficiaries, it is prudent to alert your solicitor to the details of the policy when drafting your will and to leave instructions for your executor relating to the policy.

Estate planning is as varied as your individual circumstances, asset pool and family dynamics. With open communication, proper legal advice and clear testamentary intention your solicitor is in a position to be able to create a will or testamentary trust to best suit your beneficiaries needs and relay your testamentary intentions.

Talk to us. You'll be inspired!

Jane C Pfister
Solicitor.