

Family Property Issues

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The Legacy of Longevity

- Facts of ageing
 - More of them (us) and for longer
 - More widows than widowers
 - More divorces
 - More separations
 - More re-partnerings
 - More singlehood
 - More loneliness
 - More incapacity

The Legacy (cont)

Facts of Families

- Lots of adult children (baby boomers)
- Repressed enmities & jealousies
- Spread all over the place
- Parents reliant and dependent
- Aged Care
- Family 'substitute decision makers'
- Elder abuse

My Plan

The Plan

- The family finance landscape
- Legal implications
- Scenarios

Family Finance (in life & in death)

What are parents up to (with children?)

- Lending
- Gifting
- Paying for....
- Moving in with
- Borrowing
- Being cared for

What are children up to (with parents?)

- Lending
- Paying for
- Moving in with
- Borrowing
- Caring
- Making decisions

What are parents up to (with other people?)

- Re-partnering
 - Re-marry
 - De-facto
 - Compacto
 - Friends with benefits (and burdens)
- Pre-nuptial agreements – what's mine is mine
- A party to child's nuptial agreement
- Doing silly things

The Law of Family & Scenarios

Lending/Gifting to Children

- Paying for something - what is it – a loan or a gift?
 - Time limits
- Document?
 - What if you don't
 - Legal presumptions
- Security?
 - Most are undocumented and unsecured
- Inequality of advances
 - Effect on your Will
- Effect on your aged care
 - Impoverish yourself
 - Centrelink
- Personal guarantees
 - Do they survive your death

Scenario

The Parent Largesse with limited means

- Elderly parents of limited means
- Advance total of \$286,000 to one son in 13 trances
- On each occasion he states:
 - “...I will pay you back and more and I’ll look after you in your old age”
- When need to parents ask for it back (for aged care)
- He says – No – a gift
- Parents sue

Scenario

Oh Dear

- Elderly widow (98)
- On pension
- Gets \$250,000 in heritance
- Doesn't need it she thinks at her age
- Gives to charity
- Disaster

Scenario

The mish mash of blending

- Widow (79) homeowner remarries
- New husband moves in
- Agree to keep assets separate
- Wills giving everything to respective families
- She has stroke shortly after marriage
- He cares for her for 9 years till dies
- He in precarious position
- Challenges Will
- Some estate planning solutions?

Scenario

Later life and death

- Cyril & Cynthia early 80's & second marriage
- Move in with Cynthia's daughter - undocumented
 - They pay \$200,000
- Wills give everything to respective families
- Cynthia dies
- Cyril wants to stay but daughter wants him out
- Asks for the money back

Scenario

It's complicated

- Bob & Alice – Fred & Fiona – 2 'couples in their 70's
- Bob and Fiona also have respective spouses
- Spouses with dementia and either at home or in ACF
 - 'separated by illness'
- Bob and Fiona don't want to divorce but don't want to be martyrs
 - All accepting – except guess who?
- Interesting testamentary implications
 - Should Bob and Fiona do Wills excluding their respective spouses?

Scenario

The Martyr Child

- Adult child (one of 4)
- Moves in with elderly mum to “look after her”
- Becomes her EPOA
- EPOA permits conflict transactions
- Daughter starts paying herself for her care services
- Other children unaware

Scenario

Retirement Nirvana

- Mum in RV and needing care
- Daughter offers to move in and does
- Gets carer's allowance
- Village operator discovers
- Requires her to leave and mum obtain home care package
- Mum and daughter dig in heels

Scenario

The Generous Son

- Son pays RAD of \$300K for mum
- Undocumented
- Mum's estate gets RAD refund when dies
- Status of son's interest in her estate?

Scenario

Partial Generosity

- Accommodation payment part RAD (\$200K) part DAP
- Second husband advances \$200K to spouse for RAD
- Documented in loan agreement with spouse through her EPA
- Unsecured
- Care fees are deducted from RAD over time (clever EPA)
- RAD is being whittled away

Scenario

What's Mine is Mine – or is it?

- Both in their 80's – 10 year second marriage
- Children from both previous marriages
- Property kept separate
- She enters aged care – he stays at home
 - Bond of \$300K due – interest accrues at 6.5%
 - She can't pay – he can but refuses (after getting legal advice)
- Her children (EPA's) apoplectic
- Aged care facility apply to QCAT to have EPA's sacked
- Should children be applying for family law property orders?
 - Too late – he dies

Scenario

The Lothario

- Elderly woman enters aged care
- De-facto 'friend' pays \$250K bond
 - undocumented
- Woman meets 'lothario' in facility
 - Steal away one day and get married
- Woman dies intestate with children
- Problems for de-facto
 - Capacity to consent to marriage
 - Fate of the bond

Scenario

Innocent Ignorance

- Mum moves into aged care leaving her home vacant
- Three adult children who are her Enduring Powers of Attorney
- Sell house and pocket the proceeds between the three of them
- Another disaster

Scenario

Son sells his inheritance

- Dad makes Will giving his home to one son who is his EPOA
- Gives rest of estate to son and other child equally
- Dad has to move into aged care
- House has to be sold to pay RAD
- Son loses inheritance
- Refund of RAD becomes part of the rest of his estate

Scenario

OOPS

- Mum moves into aged care
- House vacant
- Her EPOA's are her 2 children
- Fail to advise home insurer that home vacant
- It burns down
- Yuk

Scenario

Not making the connection

- Dad gives various children varying amounts in his life (total \$1.8 million)
- No accounting for it in his Will
- Less well provided for children apoplectic
- Family implosion
- Legal proceedings

Scenario

Super Blooper

- Dad has self managed super fund (SMSF)
- Nominates his 2 children to receive death benefit when dies
- He is trustee and when dies the 'Executor' of his Will becomes new trustee
- Only appoints one of his children as Executor
- She becomes sole trustee of SMSF and pays death benefit to herself!

Scenario

Mortgage in reverse

- Widow needs more money for home care and everyday living activities
- Asset rich and cash poor
- Takes out reverse mortgage on her home
- Children in the dark
- Later needs aged care but can only afford if sells home and pay out mortgage
- Not enough to pay RAD
- Children have to make up difference

Family Aged Care

- Increasing family involvement in aged care
 - Paying for aged care
 - Oral care agreements
 - Family Agreements (Assets for care)
 - ‘granny flat arrangements’
 - The substitute decision maker
- Motivated by principle and pragmatism

Family Agreement

Family Agreements

- What are they?
 - 'Assets for care'
 - Transfer of assets in return for promise to care
- Types
 - Mum transfers home to daughter who moves in and promises to care
 - Mum pays for constructions of a home or flat on existing property in return for a promise to care
 - Mum transfers assets and money to caring child

Oral Arrangements

- 73 year old recent divorcee in ill health
- \$100,000 in cash from property settlement
- Daughter suggests move in to her place
- Unstated promise to care for life
- Convinces mother to put money into an account in daughter's name
- Probably to avoid social security issues
- Mother evicted after 3 months
- Wants her money back but daughter says was a gift

Oral Arrangements

- Disaster
- Mother without home and money
- Aggravated ill health
- Legal proceedings
- Social security hovering with intent
- Family implosion
- Irrevocable breakdown of relationships
- Mother dies – Executor continues claim

Substitute Decision Makers

Issue for them in estate planning

- May have to adeem principal's assets to pay for aged care
- Exposes EPOA's personally
 - Particularly if have not obtained legal and financial advice
 - See section 107 Qld Enduring Powers of Attorney Act
- Highly advised to obtain copy of principal's Will
 - QLS advises they entitled to a copy not the original
- May need to consider Statutory Will application
- Should EPOA's insure for PI?
- Should lawyer for estate investigate actions of EPOA as part of duties?

Finally

Aged Care and the Mum and Dad Will

- Is a 'mum and dad' Will for Beryl and Bob appropriate if:
 - Beryl is suffering from Alzheimers and is in aged care
 - Bob is fine but dies before Beryl
 - Centrelink now attributes Beryl with all the assets
- Would it be more sensible for Bob to disinherit Beryl or at best give a life interest in his estate?
- If the children were Beryl's EPA would they be interested in challenging Bob's Will on behalf of Beryl?
 - Especially if they are beneficiaries of Bob's estate

Growing more mature is not as simple as it used to be

ARE YOU READY?

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