



Time to reflect and review

We've made it to 2022! Most families have seen COVID up close. All the Legacy Law team contracted it, except Mrs Legacy Law but then she is only partially committed to the firm! (Ask us about the annual Legacy Law employee awards night).

Hopefully we can all get our lives back to normal soon.

A new year brings with it the opportunity to reflect and do the important things better in the future. At Legacy Law, we are very excited to be fine tuning our "Be A Better Ancestor" program which builds an estate plan up to a full legacy which is a lot more than a financial inheritance. You will be hearing more about that over this year and can register for updates on it [by clicking here](#). Anisa has registered that phrase as a trademark for us so please tell everyone about it but be careful not to breach our IP!

As estate planning specialists, we suggest that it is good practice to also review your estate planning documents, superannuation nominations (which may only last three years) to ensure that they reflect your current circumstances. The bad news is that your estate plan is not a contract and your family are not obliged to accept it – they can easily challenge it in court although their chances of succeeding are not guaranteed.

The number one strategy for avoiding such disputes is to have a family meeting with us as independent observers to advise what is in the estate plan at a high level. No-one likes surprises and only a few like high drama in a family. Usually, the meeting goes very well and the children learn how to manage a potentially large superannuation tax bill and the family all agree to pull together and not fight about money or assets.

Unfortunately, sometimes a family member is bound to bring a claim and the meeting can smoke this out (or it can manifest shortly after the meeting). It is very helpful if that claim can be anticipated and some essential preparation done. We can help as, unlike many estate lawyers, we also fight for our clients in court. We continue to review the relevant cases (there are many) so that we may better advise you as to the attitude of the courts to trusts, claims and entitlements.

This review can save your loved ones the stress of going through litigation and ultimately using the estate funds to pay the legal costs and diminishing the value of their inheritance. We have seen families torn apart and nephews and nieces never even meeting each other as a result of an earlier family dispute.

We are involved in a case where a couple separated and the husband died without a Will in place and before formally divorcing, so legally he was still married. Despite them having broken up and her getting around half of his assets under a settlement, she is on the face of it now, on his death, claiming the other half as his legal wife (including his superannuation).

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These scenarios may seem unusual but Anisa found a recent precedent. [Alvarez v Matthews \[2021\] NSWSC 551](#) demonstrates how important it is to review your estate planning structures periodically, especially after a separation. In this case, Mr Alvarez (“the deceased”) passed away in February 2020 and was survived by his wife and three children. The deceased left his estate to his three children. Note the case uses their actual names. This is all very public.

The deceased and Mrs Alvarez separated in 1998 but were living in the same property which was their former family home. They separated their finances in 2001 and closed their joint bank account and registered their marital status as separated with Centrelink. Mrs Alvarez had been receiving pension as a separated woman. In 2004, Mrs Alvarez severed the joint tenancy of their former family home, and the property was thereafter held by her and the deceased as tenants in common. According to Mrs Alvarez’s own evidence, the severance of the property was part of a mutual estate planning arrangement. The Court found that the division of assets appeared to be a formal and official severances of financial ties.

Mrs Alvarez sought provision from the deceased’s estate to cover her accommodation needs and future expenses. However, the Court was not satisfied that Mrs Alvarez was entitled to more than half of the former family property (or an equivalent sum of money) to live as she wished.

It is important to note that the Court did mention that there is no rule that separation in itself does not sever one spouse’s moral obligations to another and that the effect of a separation on a claim on one’s estate **depends** on the circumstances. An estranged child, however, may well have a reduced moral claim to the estate of a deceased parent.¹

When asked for legal advice, lawyers are notorious for replying with “**Well, it depends**”, because well, it truly does depend on the circumstances and the facts of the matter.

We can help you navigate what it all **depends** on and would be happy to review your estate planning structures for you.

We are happy to lend a helping hand and discuss any possible claims to your estate and assist with ensuring your documents are up to date and identify any risks and mitigate them. It is important to protect your legacy.

Please email Anisa Ali on aali@legacylaw.com.au if you would like to arrange a time to discuss setting up a family meeting for your family or would like to discuss any family legal issue.

¹ *Palmer v Dolman* [2005] NSWCA 361