

Law Update:

Renovations, Wills, Innovations & Swimming Pools

September, 2013

Be careful when renovating your home

The owner of a home unit made some internal renovations without seeking council approval and without ensuring that the builder had insured the work. The Home Building Act requires work with a value over \$20,000 (and some specialist work for less than that value) to be insured. If the property is sold within 6 years, the Contract for Sale must include evidence of the insurance. Some buyers also want to be assured that Council approval was given. The owner was in a position of having to find an insurer who would provide the insurance policy retrospectively. Anybody carrying out home renovations

should ensure that, whether they are an owner/builder or using a licensed builder, the appropriate insurance required by the Home Building Act is taken out, and that any necessary Council approval is obtained.

Do you have a question about your home renovation. Please contact us on 9267 9800 or lawyers@emilford.com.au.



Don't overlook making a Will

We recently acted in an estate where the deceased did not leave a Will. In that case the NSW Succession Act determines how the estate is divided. However the deceased had indicated in conversations that she wanted the estate to be divided in a particular way. The family and beneficiaries incurred considerable costs in working out a compromise division of the assets that could have been avoided had the deceased made a proper Will. We know that some people are hesitant about making a Will, but the consequences of not making a Will can lead to strained relationships that take a long time to heal, and sometimes never do.

Accountants & Financial Planners

Don't overlook your accountant when making a Will. Often clients pay large fees to financial planners but do not consult their accountant in relation to the plan. When you are considering a financial plan, it usually involves input from your lawyers and accountant as well as the financial planner.

We recently heard of planners who charged \$40,000 to a family for advising on a financial plan when all of the family's assets were held in a trust making the financial plan of no real effect. If the client had spoken to their

Don't overlook making a Will (Cont)

accountant and lawyer they would have saved a considerable sum.

Superannuation

Many people are not aware that when they sign up to become a member of a superannuation fund, after they die the trustee of the fund has a discretion to distribute the superannuation proceeds to the estate, spouse, specified children or certain dependent beneficiaries. However, the trustee does not have that discretion if a "binding death benefit nomination", has been made or renewed in the last 3 years nominating specified beneficiaries from that group.

Often the superannuation fund asks the member to nominate a beneficiary, but does not make it clear that:

- such a nomination has no effect if it is in favour of a person other than a permitted beneficiary, or
- that a nomination must be renewed every 3 years (except if the fund is a self-managed superannuation fund).

In an estate, a deceased filled out the superannuation application form

specifying a particular person as a preferred beneficiary. This was not in a form that would have satisfied the requirements for a binding death benefit nomination and, in any event, had been made more than three years before death. The Trustees of the Fund, exercised their discretion and paid the proceeds to the estate.

On similar facts in another estate, the Trustee paid the proceeds to individual beneficiaries when everybody wanted the proceeds to be paid to the estate.

If you contribute to a superannuation fund you should discuss with your financial advisor and your lawyer how a binding death benefit nomination fits into your estate plan.



Do you need help with your estate planning? Contact us on 9267 9800 or lawyers@emilford.com.au.

Innovations

We assist many clients who are involved in innovation and start-ups.

In keeping with our interest in innovation we have developed an online program for preparing the Contract for Sale of Land www.paradocs.com.au. Paradocs makes the process of preparing a Contract for Sale quick and efficient and is now being marketed to other law

firms. We use Paradocs to assist us to look after all property transactions cost effectively.

Need help with a business startup? Interested in Paradocs? Contact us on 9267 9800 or lawyers@emilford.com.au.



Changes to the Swimming Pools Act

Recent changes to the Swimming Pools Act mean that if you have a swimming pool on your property you must register the pool before 29 April 2014. The local Council is required to inspect pools to ensure that they comply with the fencing and signage obligations under the Act. If you sell your property after

29 April 2014 you must attach to the contract a Certificate of Compliance in respect of the pool issued by the Council or by an accredited certifier. You can register your pool now, or check the compliance requirements at www.swimmingpoolregister.nsw.gov.au.



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