



Duncan.Legal

planning for life...

Newsletter – Issue No. 19 (May 2023)

WHAT WE DO

Duncan. Legal offers a personalised and caring service with a special focus on assisting families with disability.

We can help you with your Estate Planning (Wills & Powers of Attorney) and provide advice & guidance on Guardianship & Administration, Supported Decision Making and Protective Trusts.

We are committed to educating families with disability on their Estate Planning options. We release a newsletter 4 times a year and hold regular webinars and presentations.

If your school or organisation would like to avail yourselves of a webinar or face-to-face presentation, please call or email us.

Giftng Real Estate in your Will – getting Title details right!

At Duncan.Legal it is part of our due diligence to always do a Title Search of properties owned by clients to make sure that the title details match the instructions we receive.

Real estate is typically owned by multiple parties in one of 2 ways:

- Jointly; or
- As Tenants in Common in specified shares.

Joint ownership means that all persons own the property together absolutely, and that the last person surviving out of the owners will own the property solely. **Tenants in Common** ownership means each own a specified share or part of the property. That share can be bequeathed through a Will when the owner of that share dies.

Not infrequently it is discovered that the **form of ownership** recorded on the title is not how clients have understood they owned the property, or that the proportions of the property owned may not align with the owners' understanding.

Unremedied, these are serious issues that can significantly impact your beneficiaries' inheritances after your death, and may be expensive to sort out.

Other issues that may be detected through a title search include:

- incorrect spelling of owners' names;
- use of former surnames; and/or
- a mortgage may still be recorded when owners believe it has been fully paid off.

In this era of computerised data matching, the names in which your assets are held must match exactly to that specified in a Will. It is a kindness to your future Executors to make sure all asset ownership documents are uniformly named. Corrections in naming are much harder to make when the Willmaker is deceased. Similarly, making sure that the mortgage recorded on title is removed (if you do not need to retain it for redraw purposes) is one less detail your Executor needs to attend to and less expense to your estate.

Finally, you should always know where your title is stored, whether it be in hard copy or as an ECT (Electronic Certificate of Title), and your Executor should be

advised where to find this very important document. Lost Title Deeds create significant problems for an Executor, and cause delay and expense in the distribution of an estate.

Checking Titles is one aspect of your estate planning arrangements that Duncan.Legal is vigilant to cover off. But you can easily address many of these loose ends for yourself. Remember – it is ultimately a kindness to the persons you appoint as your Executors to ensure that your title details are in order! *For a full explanation, head to the blog on our website [Click Here](#)*

IMPORTANT UPDATE!

SUPPORTED DECISION MAKING DOCUMENTS

Changes in mental health law – reduction in role of Nominated Support Person

As a consequence of findings from the Royal Commission into Victoria's mental health system, Victorian mental health law has been completely overhauled. The 700+ page *Mental Health and Wellbeing Act 2022*(Vic) was passed in September 2022, and becomes operative on **01 September 2023**. This replaces the previous *Mental Health Act* of 2014.

Under the new legislation a person may continue to appoint a Nominated Support Person to represent their interests and advocate on their behalf for any future time when they might become a “patient” within the definition under the new Act.

The 2022 legislation recognises pre-existing appointments of a Nominated Person made under the 2014 Act, but only to the extent of the role as defined in the new legislation. Persons who have a Mental Health Act Nomination of Person document under the 2014 Act, and those persons appointed under such document, should be aware that the powers given under the Nominated Person role have been watered down.

Most critically, under the 2014 appointment a Nominated person was someone that “**must** be consulted in relation to the person’s treatment”. Under s.61 of the new Act the Nominated Support Person is only empowered to “receive information and be consulted about the patient”, presumably if the treating health professionals consider it appropriate to do so.

A Nominated Support person has no longer any legal basis to insist upon being consulted regarding treatment of the patient.

This is a concerning development for Nominees who care for persons with mental health issues as the treatment consultation requirement is no longer mandatory upon treating health care professionals or service providers.

The families for any person committed as a patient to a facility for treatment of mental health may find themselves effectively shut out from advocating for the care of their loved one, and not able to find out what is going on behind closed doors.

If you or any of your family members has nominated a support person under the 2014 Act, we recommend that you review the scope of this document in light of the new laws. If you need further advice to understand what this means for the future care of your loved one, or you wish to make a new Appointment, Duncan.Legal is available to assist.

Social Media Legacy Contact

A Legacy Contact is a trusted friend that you can nominate to manage or close down your social media page after you pass away.

Facebook: Duncan.Legal circulated this information some time ago, but the steps have changed.

1. From your main profile, click your **profile photo** in the top right of Facebook.
2. Select **Settings and privacy**, then click **Settings**.
3. On the left-hand side of the page click **Personal Details**.
4. Then, click **Personal Details** again.
5. Select **Account Ownership and Control**.
6. Select **Memorialisation**.

Note: *You must be aged 18 or over to select a legacy contact.*

Instagram: does not feature a legacy contact. This means you will need to leave detailed instructions in your Will to either have your account deleted or memorialised. To memorialise your account, Instagram requires proof that you have passed first.



Special Olympics

The Special Olympics **World Games** are only weeks away!

To be held in **Berlin, Germany** from **17-25 June, 2023**, athletes will be travelling from all over the globe to compete.

Australia is sending over **60** athletes!

If you would like to learn more about this incredible event, follow this link:

[SO World Games 2023](#)

If you would like to donate or sponsor an athlete, please follow this link:

[Sponsor an athlete](#)

Or head to the Special Olympics Australia website.

We wish all our Special Olympics athletes all the very best in the upcoming World Games!

[Athlete's Oath:](#)

"Let me win. But if I cannot win, let me be brave in the attempt"

Original Document Storage

Do you know where your original Will, Powers of Attorney, Birth Certificate, Trust Deeds or House Title etc., are stored? It is important that you keep track of these vital documents and store them correctly to avoid damage or loss.

All your original documents should be stored in a waterproof, fire-proof, vermin-proof, secure safe or safety deposit box.

A regular filing cabinet at home or in a box under the bed are not good options.

Take the time to locate your important life documents and consider if they are stored in a manner that protects them and ensures their longevity.

If you need to relocate your documents, Duncan.Legal can securely store your Estate Planning documents free-of-charge.

Join our friends at the [Association for Children with a Disability \(ACD\)](#) for the opportunity to build your skills and confidence to help your child get the support they need at school.



**Association for
Children with a
Disability**

Successful Secondary Years for your child with disability

If you have a child with disability in Year 7 and above then don't miss these FREE online workshops, [Successful Secondary Years!](#)

All workshops are led by professional facilitators who are parents of young people with disability and who have personal experience of navigating the secondary years.

Topics include:

- Reasonable adjustments at secondary school
- Social connections and wellbeing
- Communication with school
- Supporting your child to self-advocate

Workshop dates:

Tuesday 13 June 10:00 am

Wednesday 14 June 10:00 am

Thursday 15 June 7:00 pm

Monday 19 June 7:00 pm

Places are limited for these FREE workshops

Registration:

[Register now to secure your place](#)

bit.ly/SSYjune23

Estate Planning Audit

Disability Estate Planning can be a complex and daunting undertaking for many families.

To assist you to understand the complexities and to provide you with some options, **Duncan.Legal** offers all clients an Estate Planning (EP) Audit with the **first ½ hour of the first appointment free-of-charge**. This initial appointment can be held in person or via teleconferencing (Zoom).

We will meet with you to understand your estate planning goals and the complexity of your assets. Margaret can highlight issues relevant to your personal circumstances for you to consider, and answer your questions.

At the end of the appointment, we can provide you with a written estimate of the cost to update your estate plans (Wills & Powers of Attorney etc). You take the estimate away with you and consider it. There is no obligation to proceed.

Take the first step in your Estate Planning or update your existing plans to better reflect your family's situation!

To arrange your EP Audit, contact Lee on 9077 7731 or email leesmart@duncanlegal.com.au



Duncan.Legal Webinar Recordings

'Disability Estate Planning' Webinar	\$99.00 (incl GST)
'Supported Decision Making' Webinar	\$55.00 (inc GST)
'Special Disability Trusts' Webinar*	\$77.00 (inc GST)

Our webinars are an inexpensive way to receive relevant disability specific information you need to commence your estate planning journey in the comfort of your own home and at your own pace.

*Why not have a look at our new **Special Disability Trusts Webinar**? It contains a lot of detail on a subject that it is hard to find good information on, at a very reasonable price. It's our most popular webinar!

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