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Estate Planning Tasmania News

Issue 53 | October 2015

Facebook Launches Legacy Contact Feature in Australia

As of 13 May 2015, Australians can now choose to have their Facebook Account deleted or appoint a Legacy Contact to manage their Facebook Account after they die.

The new feature (identical to that introduced in the USA in February) allows an appointed “legacy contact” to:

- write a post to display at the top of the memorialised Timeline (for example, to announce a memorial service or share a special message);
- respond to new friend requests from family members and friends who were not yet connected on Facebook; and
- update the profile picture and cover photo.

If given permission under the new feature, the legacy contact may also download an archive of the photos, posts and profile information from the deceased person’s Facebook.

Other settings will remain the same as before the account was memorialised, including that the legacy contact is not permitted to:

- log in as the deceased;
- review the deceased's private messages (interestingly the security feature notes that Facebook may provide access to this type of information in response to a valid Will or other legal consent document expressing clear consent);
- delete a post or picture, even if they deem it offensive or cruel. This would need to be reported to Facebook, who would remove it; and
- remove any friends.

There is an alternate option that allows a Facebook user to elect, if they do not wish to choose a legacy contact, to have their Facebook permanently deleted upon notification of their death.

If a person fails to appoint a legacy contact, but appoints an executor with powers over their digital estate, they will be given the same powers as a Facebook legacy contact as Facebook recognises their legacy contacts.

See <https://www.facebook.com/help/1568013990080948> for more details.

If you would like to speak to us about this feature or more broadly about your entire digital estate and how to ensure that you have made adequate provision for its control as part of your estate planning, please contact Kimberley Martin at (03) 6223 8899 or email her directly on kimberley.martin@pwl.com.au.



Kimberley Martin
Senior Associate

How can a “loan” to a child be protected from the risk of their relationship breaking down?

It is not uncommon for a parent to make a substantial loan (or gift) to a child to assist them to purchase a home. An issue can arise if the child's relationship breaks down, which may lead to a dispute about the equity in the home that the parent has assisted them to purchase.

Not all “loans” made within families are equal for Family Law purposes. The following are likely to be particularly relevant to the outcome for both parent and child in the event of a Family Law dispute:

- is the loan actually a loan (i.e. there is a debt which requires real repayment to be made), or was it in fact a gift (without expectation of repayment)?
- is the loan documented (for example, by a loan agreement, mortgage, or acknowledgement), or is it simply a payment without anything in writing?;
- are interest and / or capital repayments required on the loan?;
- can the parent require the repayment of the loan, and, if so, in what circumstances?;
- does repayment of the loan have priority or security against other debts of the child and their partner?;

- is the child's partner a party to the loan, or did they acknowledge that it was a loan?; and
- can the amount and fact of the loan being advanced be verified by available documentary evidence?

A gift from parent to child will normally be credited to the child who receives it in any later Family Law proceedings, as a "contribution" by the child to the property of the relationship. However, the property that can be divided by the Family Law Courts will still include the gift. Those proceeds are therefore at risk of being received, in whole or in part, by the child's former spouse. A loan, by contrast, can constitute a legally enforceable debt owed by the child (or, in some cases, the child and their spouse) back to the child's parent. If properly documented and secured, and if accepted by the Family Law Courts as genuine, a loan will generally better protect the equity provided by the parents, by preventing it forming part of the property available for division between the child and his / her spouse.

Parents who have made (or who are considering making) substantial advances to their child should review and consider whether their arrangements give the best available Family Law protection for them and their child and seek appropriate advice from Worrall Lawyers. For more information on this, please call (03) 6223 8899 or email:

- Sam McCullough (email: sam.mccullough@pwl.com.au);
- Maggie Keeling (email: maggie.keeling@pwl.com.au);
- Trevor McKenna (email: trevor.mckenna@pwl.com.au);
- Peter Worrall (email: peter.worrall@pwl.com.au); or
- Kimberley Martin (email: kimberley.martin@pwl.com.au).



Trevor McKenna
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Sam McCullough
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Different Types of Property Ownership in Tasmania

When reviewing your estate planning or purchasing new property, in order to ensure that property transfers in accordance with your wishes on your death, it is important to understand:

- **how real estate is presently owned and how it may be changed to a different form of ownership;**
- **how it will be dealt with on death under each form of ownership; and**
- **what provisions should be made in your Will and other non testamentary documents, if necessary, for any ownership interest you have in real estate.**

In Tasmania, real estate can be owned, where an individual is one of the owners, in several ways. This includes only as a sole owner; as joint tenants; and as tenants in common, either in equal shares, or in unequal shares.

Sole Owner

This type of property ownership means one person or entity owns the property in their own

name. The whole property in this form of ownership is capable of being gifted by a Will. This is so, unless the sole ownership represents ownership through a trust, and the sole owner is the Trustee of that Trust.

If no Will has been made, the interest in the property will pass under the provisions of the *Intestacy Act 2010* (Tasmania).

Joint Tenants

This type of property ownership means that more than one person owns the whole of the property together. If any of the joint owners die, the surviving owner(s) automatically receive the ownership interest of the person who died. This is so, regardless of what provision is made in the Will of the person who died.

For example, when there are two joint tenants, the surviving joint tenant owns the whole of the property on the death of the first joint tenant to die.

When there are three or more joint tenants, the surviving two or more joint tenants own the whole of the property on the death of the first joint tenant to die. And those surviving owners continue to own as joint tenants.

There are ways of converting a joint tenancy to a tenancy in common.

Tenants In Common

This type of property ownership means more than one person owns the property, and that each co-owner has a separate interest in the property. That separate ownership interest in the property will form part of the co-owner's estate on that co-owner dying. So this separate interest is capable of being dealt with by a Will and gifted to a beneficiary.

The co-owners can hold their shares as tenants in common in either equal shares; or as unequal shares.

If the co-owner, who is a tenant in common, dies without a Will, their interest in the property will pass under the provisions of the *Intestacy Act 2010* (Tasmania). This is the government mandated form of the passing of property on death where someone has no Will.



Kimberley Martin
Senior Associate

Worrall Lawyers offers a full range of Estate Planning advice and documents, tailored to your specific circumstances and requirements. If you wish to discuss your circumstances with one of our estate planning lawyers, please call **(03) 6223 8899** or email:

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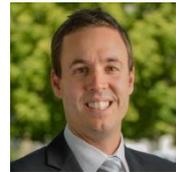
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Further Information

Our Website:

A wealth of information in relation to estate and commercial matters can be found at our website www.pwl.com.au

Contributions:

Contributions and suggestions from Estate Planning News readers are always appreciated. Email us at silas.hoon@pwl.com.au

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