

Worrall Moss Martin News

Issue 13, February 2020



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The Inheritance Feud over Bob Hawke's Estate

Disputes over former prime minister Bob Hawke's estate have been making news headlines in the months after his death. Although there is no formal court decision yet, the events that have taken place since his death highlights the increased risk of dispute, and the importance of proper estate planning for blended families and families with complex circumstances.

The Facts: It is reported that Bob Hawke left over \$15 million to his second wife, Blanche d'Alpuget, \$750,000 to each of his three children from his first marriage, and \$750,000 to Ms d'Alpuget's son, Louis Pratt.

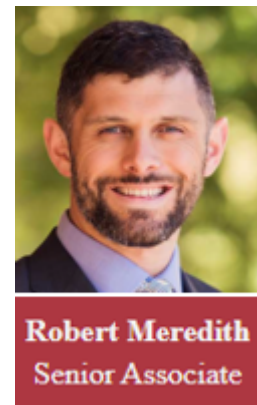
Bob Hawke's daughter, Rosslyn Dillion (who is reportedly on welfare, lives in a squalid flat and suffers from depression, anxiety, PTSD, and agoraphobia) is said to have lodged a family provision claim in New South Wales that seeks to increase her inheritance by \$4.2 million dollars. The \$4.2 million claim includes:

- \$2.7 million to buy a house in Sydney;
- \$30,000 for dentures;
- \$1,030 for a computer course;
- \$4,000 for linen and towels;
- \$3,100 for kitchen appliances;



Kimberley Martin
Director

- \$5,500 for other kitchen items;
- \$16,000 for household appliances;
- \$50,000 for furniture; and
- \$6,000 for new clothes and shoes.



Ms Dillion's son, Paul Dillion, is also reported to have vented his frustration over personal items, which Ms d'Alpuget sold at public auction, that he claims Bob Hawke promised to him.

Blended Families: A blended family exists where the parties to a relationship have been involved in previous long-term relationships or marriages and there is a child or children of more than one relationship.

The Increasing Number of Blended Families: Over a third of Australian marriages end in divorce. As a consequence, there are a large number of blended families, and the traditional 'nuclear' family of two married parents and their children is becoming increasingly rare.

The Importance of an Estate Plan: Where there is a blended family, there is increased complexity from an estate planning perspective. There are more relationships that the estate plan must address, and there are different circumstances that must be considered. The separation of parents and the existence of a subsequent relationship can also create resentment and anger within families, because of the prospect of family assets going to the new blended family rather than the children of the original relationship.

An effective estate plan, and properly drawn documents based on that plan, can assist in ensuring that all parties are treated appropriately, and where necessary, protected from claims. Doing this carefully will lower the risk of successful litigation and limit the damage caused by bitterness and resentment within the surviving family.

Key Estate Planning Considerations for Blended Families: Considerations that may be relevant for blended families when completing an estate plan include:

- who should be appointed to controlling roles (including as Attorneys, Enduring Guardians, Executors, Trustees and other controlling roles) in order to ensure that all members of their family (or those chosen) are protected and 'have a say'?
- how should assets be divided amongst the second spouse and children?
- should you disclose the terms of your Will to your new spouse and your children?
- should you document the rationale and reasons for your estate plan?
- is there a risk of a claim being made against the estate by their children or new spouse for further provision? And if so, what steps can be taken to protect the assets from a successful claim? Possible considerations include:
 - creating a capital protected Will Trust;
 - creating a life interest for the spouse, with benefit then passing to children upon that spouse's death;
 - making specific provision for superannuation and life insurance;

- creating a family trust to protect assets from claims against the estate, so that the trust assets do not form part of the estate asset pool;
- reviewing loan accounts of existing family trusts;
- owning property as joint tenants, so that it automatically passes to the surviving joint tenant and **does not form part of the estate** asset pool;
- owning property as tenants in common, so that it **forms part of the estate** asset pool and be dealt with under the terms of the person's Will;
- completing and maintaining a valid Binding Death Benefit Nomination (if provided by their fund) that upon their death directs payments of the superannuation benefits either to the member's legal personal representative (so that is **forms part of the estate** asset pool) or directly to the spouse or children (so that it **does not form part of the estate** asset pool);
- putting a Financial Agreement in place that details how property and financial resources will be dealt with if they separate or die; and
- putting a Mutual Wills Agreement in place that makes a binding agreement that the parties to the agreement will not make changes to the whole (or part) of their Will without the consent of the other person or people.

Worrall Moss Martin Lawyers has specialist skills and experience in estate planning and estate litigation for blended families. If you, or your client, need expert advice and guidance about structuring an estate plan to minimise the risk of a successful claim, or about the eligibility and merits of an actual, anticipated or potential claim against an estate, please contact Kimberley Martin or Robert Meredith.

Being an Executor - Should I Say Yes?



Kate Moss
Director

I have been appointed as an Executor. Should I say yes? Can I say no? Can I resign after I have accepted my appointment? These are common questions asked by people who have been appointed as an Executor.

Should I accept my appointment? Careful consideration is required for any person contemplating the acceptance of their appointment as an Executor. Executors should seek legal advice **at the earliest possible opportunity**, and consider whether they wish to accept the appointment, prior to taking steps in relation to the administration of the estate. If careful consideration of this is not made before accepting the appointment, Executors may later find that it is too late to decide not to be involved.

People will choose to accept their appointment as an Executor for a number of reasons:

- it may be motivated by personal considerations: they may be a close friend or family member of the Willmaker, accepting the position on the basis that it is 'the right thing to do';
- they may feel obliged to accept the position because the Willmaker specifically selected them as their Executor; and/or



- they consider that they have the requisite skills and experience to undertake the role.



Often, an Executor will discover during the administration of the estate, that the role is more difficult or complex than they had anticipated; the work that is expected of them affects different aspects of their working and personal lives; the matter turns litigious; or they find themselves in dispute or conflict with other family members, business associates, or beneficiaries named in the Will.

Can I refuse my appointment? Yes, provided that you have not undertaken any action as an Executor (which is called 'intermeddling with the estate'). Common examples of intermeddling include signing legal documents, dealing with the deceased person's assets and providing instructions to professionals engaged by the deceased (for example accountants or financial advisers). The *Administration and Probate Act 1935* (Tasmania) provides that an Executor may 'renounce' their appointment as an Executor.

Can I resign after I have accepted my appointment? Once a person has accepted their appointment and Probate of the Will has been granted, it is very difficult for an Executor to resign. Although there is some provision under the *Administration and Probate Act 1935* (Tasmania), these only apply in limited and exceptional circumstances.

The recent case of [*Tatchell & Anor v Soph & Anor* \[2019\] SASC 187](#) is an illustrative example of Executors resigning after they had 'intermeddled' in the estate. This case concerned an application by Executors to have their appointment 'passed over' and an independent Executor appointed in their place.

- **The Facts:** Prior to his death, the deceased ('Mr Soph') was in the process of negotiating a property settlement with his wife. Mr Soph was also involved in a number of entities including trusts, companies, directorships, shareholdings and a self-managed superannuation fund.

Almost twelve months after Mr Soph's death, the Executors named in the Will had still not made an application for Probate of the Will. The Executors were said to have concluded (after approximately one month after Mr Soph's death) that they wanted to renounce their appointment as Executors because of the complexity of the estate, the time commitment it would require, and the potential conflict their appointment would cause. They had however not done so formally, and it was clear that they had significantly 'intermeddled' in the estate.

All relevant parties supported the application and agreed that it was appropriate that the estate be administered by a legal practitioner experienced in the area.

- **The Law:** When considering whether to 'pass over' the Executors, regard must be given to the due and proper administration of the estate, and the interests of the parties beneficially entitled to the estate.
- **The Decision:** The Executors' application to have their appointment 'passed over' was successful, and the Court ultimately removed them as Executors and appointed a lawyer

Executor in their place.

The Court:

- commented that the administration of Mr Soph's estate was complex, and that the various interacting entities needed to be managed efficiently;
- accepted that the Executors were unaware that an application to renounce should have been brought by them prior to any intermeddling in the estate;
- noted that an important consideration in allowing the application was the conflict with Mr Soph's children, and the administration of the Will Trusts created by the Will. It was important that the relationship between the beneficiaries and the Trustee be maintained on a professional footing, and that this would be easier to achieve with a professional Trustee; and
- commented that it would be unreasonable to expect the legal practitioner to accept the time consuming and difficult role without remuneration, and made an order to allow the Lawyer Executor to charge for his work on a fee for service basis.

Important Considerations for Willmakers: The matters set out above also highlight the importance of appropriate estate planning, and choosing the right person to appoint as your Executor. Key points that a Willmaker should consider are:

- the suitability of the person or people they have chosen to be their Executor or Executors. Executors can be family members, friends, professional Executors or trustee companies;
- who should be appointed as a substitute Executor or Executors. These are people who would act where the first appointed Executor does not have capacity, has died, or does not wish to accept their appointment;
- obtaining an understanding of what being an Executor involves; and
- gathering and storing in a safe and known place, the information that will be relevant to assist the Executor.

Worrall Moss Martin Lawyers has specialist skills and experience in estate planning and estate administration, including assisting clients to choose appropriate Executors as part of their estate planning, and assisting clients who have been appointed as an Executor. Please contact Kate Moss, Hannah Boxall or Kimberley Martin if you have any questions about the matters set out in this article.

Director, Kimberley Martin Features in Accounting Magazine "In the Black"

In a recently published *In the Black* article titled "Wealth and longevity pose new challenges to estate planning", Director Kimberley Martin was interviewed by James Dunn about the increasing number of inheritance feuds across Australia. The article can be accessed at the following link:
<https://www.intheblack.com/articles/2019/11/01/wealth-longevity-pose-new-challenges-estate-planning>.



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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 Worrall Moss Martin News readers are always appreciated. Email us at info@pwl.com.au

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