

What's Happening at Halliwells



Baby news! The Ritsons are a family! Andrew and Fiona Ritson have a son Lewis born 25th June and doing well. Andrew is enjoying the early morning walks and bonding with his boy.

Lucy, Alaire and Shannon, have been working all year on their Law Society Legal Executive papers. Exams were late October and results before Christmas.

Samatha starred as the 'Wicked Witch from the West' in the successful Hawera Repertory production of the Wizard of Oz. She is now gearing up as-ary 2014.

Check out www.puketaratagarden.co.nz for Ken and Jennifer Horner's garden.

◀ The Ritson family – Andrew, Fiona and Lewis

Royal Pardon



In New Zealand, a person who has been convicted of a crime and used all of their rights of appeal has one last avenue of relief. The Royal Prerogative of Mercy ('RPM') is considered an important

constitutional safeguard in the criminal justice system that allows the Governor-General as the representative of the Queen to grant a royal pardon, reduce a sentence, or refer a case back to the courts for reconsideration.

While applications reported in the media are for serious crimes such as Scott Watson's murder conviction, the avenue is not limited to such serious convictions.

The RPM is aimed at preventing miscarriages of justice, particularly when all appeals are exhausted. A key requirement when applying for a Royal Pardon (or other act of mercy) is that there is some new information or evidence that has not been before the courts and is significant enough to raise serious doubts about a conviction or sentence.

Is Your Will Valid? Don't Get Caught Out!



The Wills Act 2007 sets out what you need to do to make a valid Will. The requirements are not complicated, but they are strict. Amongst other things, your Will must be dated, and be signed by the will-maker in the presence of two witnesses, who must also sign the Will. Each party must initial each page. Your witnesses must not benefit from the Will.

What many people do not realise is that a perfectly valid Will is rendered invalid if you get married or enter into a civil union, unless the Will specifically states that it is made in contemplation of that marriage or civil union (Section 16, Wills Act 2007). Similarly, if a Will is made during a marriage or civil union and then the relationship is legally dissolved, some parts of your Will may then be invalid (Section 19, Wills Act 2007).

Trustee VS Executor

When making your Will, it is likely you have appointed one or more people an Executor and Trustee; they may be friends, family members or perhaps a trusted professional. They do not however, need to be the same person.

An Executor is the person whom you appoint in your Will to administer your estate and carry into effect the provisions of your Will. They will be responsible for gathering in your assets, meeting liabilities and distributing the assets. This is largely governed by the Administration Act 1969. A number of Wills, however, do not provide for all assets to be distributed immediately. Examples include providing for young children to inherit when they reach a fixed age, or providing life interests to a partner. It is in these situations that the party holds the assets as a Trustee, and is governed by the Trustee Act 1956.

The role of Executor is often completed over a short duration, whereas a Trustee may have ongoing responsibilities for many years to come. When choosing your Executors and Trustees, consider the roles and whether in your case, a separate Trustee should be appointed for the ongoing responsibilities after the initial administration.



Reminder...

The New Plymouth office is at 117 Powderham Street – in the one way system travelling east just before the Police Station and Court House, opposite the Salvation Army Store.

Clients are welcome to call Shannon 0800 425 549 or 06 278 5114 for an appointment to see Preston or Ken who alternate in New Plymouth on Thursday afternoons. The office is through the Heartland AMP doorway.

Inside This Issue:

- Relationship Property After Death 2
- Relocation Outside of New Zealand 2
- Estate Planning 3
- What's Happening at Halliwells 4
- Royal Pardon 4
- Is Your Will Valid?..... 4

House Insurance is Changing



Until recently, most house insurance policies provided 'full replacement' cover. When you arranged this sort of policy, you would have specified the size of building to be insured. If your house were totally destroyed, the insurance company would pay to clean the site and build a new house to the same size and specifications, no matter what the cost. This is changing.

How is it changing?

Now, as insurance policies roll-over, insurance companies will only provide cover up to a specified value. That value would include all the associated costs of re-building (for example, costs of demolishing the damaged building, removing the debris and professional and consent fees associated with re-building). It will probably also include the costs of re-instating things like fences and swimming pools. These policies are called 'sum-insured'. Premium costs are likely to increase.

Why is it changing?

Recent global disasters, including the Canterbury earthquake, have cost global reinsurers (the companies that insure the insurance companies) a lot of money. Those companies will now only insure NZ companies if they know the costs they will face should disaster strike. Sum-insured policies allow them to do this, whereas full-replacement policies do not.

How will these changes affect me?

Previously, with a full-replacement policy, home-owners could basically just insure their house and forget about things until

and unless it was necessary to make a claim.

The move to sum-insured policies means that it will now be the home-owner's responsibility to make sure the sum insured is enough to rebuild their home. You're going to have to become a lot more involved in the insurance process, not just when you set your insurance up, but throughout the life of the insurance policy.

What should I do now?

As your current house insurance policy rolls-over, your insurance company will set a 'sum-insured' value. Don't just take their word for it – calculate the sum-insured yourself.

Do this by:

- Using one of the online calculators. You can start this process by going to need2know.org.nz or better still,
- Obtaining a valuation from a specialist (a Registered Valuer or Quantity Surveyor).
 - Step 2 is especially recommended if your house is architecturally designed or has any unique features.
 - We would advise clients to do step 1 or 2 at least every five years, or after any major renovation. In the interim years, you should at least make sure the sum insured increases by the amount of inflation.

Relationship Property After Death

Part 8 of the Property (Relationships) Act 1976 ('the Act') deals with the division of property where a marriage relationship or de facto relationship ends (after 1 February 2002) because one of the parties has died.

The basic scheme of the Act for relationships ending on death is that surviving spouses or de facto partners have a choice between two options; Options A and B, outlined as follows.

The Options

Option A is the ability to apply for a division of the relationship property under the Act and Option B is not to apply for a division of the relationship property and instead rely upon the provisions of the deceased's Will.

Choosing one of the options is a formal process that must be made by completing and signing a written notice. The notice must include or be accompanied by a certificate signed by a lawyer certifying that the lawyer has explained the effect and implications of the option chosen. It also needs to be lodged with the administrator of the estate.

There are also important time limits that apply to the election of an option. Where the estate is small enough not to require a grant of administration, the choice must be made within six months of the date of death, or, if administration of the estate is granted within that period, then within six months of the grant of administration. In all other cases it is within six months of the grant of administration. The time limit is important because the administrator of the estate may distribute the estate if no election has been made within the six month period, and once distributed it cannot be undone.

If Option A is chosen there is also a time-frame for the filing of the proceedings in court.

There is one important distinction between spouses and de facto partners in regard to the choice of options. Spouses have the right to choose Option A irrespective of the duration of the relationship, whereas de facto partners have that right only if their relationship lasted for three years or more; unless the court is satisfied that there was a child of the relationship or the surviving partner made a substantial contribution to the de facto relationship, and not having Option A would result in substantial injustice.

Option A

Generally speaking, choosing Option A means the equal sharing regime applies and that your lawful entitlement takes priority over the terms of the Will and you do not receive what has been provided for you under the terms of the Will.

Option B

Under Option B the surviving spouse or partner elects not to apply for a division of the relationship property, but to inherit any provisions made in the deceased's Will or available under intestacy provisions.

Option B is the default position if the survivor does not choose Option A within the time limit as detailed above, and in the manner prescribed.

Summary

The election of Option A or B may result in vastly different outcomes and therefore it is crucial that you obtain proper legal advice about this election and the time-frames that apply to this election.

Estate Planning – Residential Care Loans



One of the most vexing questions that we face as we get older is how we will provide for ourselves into our retirement. This necessarily includes planning

to ensure that we have sufficient funds to meet our costs in the event that we are placed into long-term residential care or a rest home. In order to determine how much we will have to contribute to the costs of long term residential care, we need to be aware of the maximum asset threshold, above which we will no longer be eligible for a residential care subsidy ('the Subsidy').

The Subsidy

The threshold is reassessed on 1 July each year. From 1 July 2013 the threshold has been set at \$215,132 for single people or for couples who are both in residential care. For a couple where only one of whom is in residential care the threshold is \$117,811, when the value of the home and car is excluded, or where combined total assets exceeds, \$215,132. Couples can only elect to have their assets excluded from the assessment where it is the principal residence of either a dependent child or the spouse or partner, who is not in residential care.

In assessing the eligibility for the Subsidy, Work and Income New Zealand ('WINZ') may include in your assets any gifts that you have made of more than \$6,000 per annum over the preceding five years. WINZ may also include in your assets

any one off gifts of over \$27,000 per couple made prior to the five year period immediately preceding the application being made.

For those people who have assets above the maximum threshold and accordingly do not qualify for the Subsidy, WINZ offer a residential care loan scheme ('the Loan').

The Loan

The Loan is interest free and secured by a caveat registered over the borrower's home. This caveat prevents the property being sold until the debt owed to WINZ has been repaid in full.

You can apply for a reassessment of your eligibility for the Subsidy when your assets have decreased below that maximum threshold for the Subsidy.

The Loan can be drawn down at the rate of the maximum contribution towards residential care costs. From 1 July 2013 the maximum contribution ranges from \$819 to \$900 per week depending on where you reside. This equates to between \$42,588 and \$46,800 for each 12 month period spent in residential care, while you remain ineligible for the Subsidy.

The Loan has to be repaid either within six months of the death of the borrower or when the home is sold, whichever comes first.

Given the modest threshold above which a person is not eligible for the Subsidy and the high weekly costs of the maximum contribution it is imperative that planning for retirement and asset protection begins as early as possible.

Relocation Outside of New Zealand

The father and mother of a child are usually joint guardians of the child under Section 17 of the Care of Children Act 2004 ('the Act'). Parents who have separated have a duty under Section 16 of the Act to consult with the other parent of the child about important guardianship matters. One of these guardianship matters is the child's place of residence, including relocating outside of New Zealand.

Under Section 16 of the Act, parents have a responsibility to:

- provide care for the child,
- contribute to the child's intellectual, emotional, physical, social, cultural, and other personal development, and
- determine for the child, or help the child to determine, matters of importance.

Parents must consult with one another and make these decisions in accordance with what is in the best interests of the child.

If both parents mutually agree to a child relocating to a place outside of New Zealand, they can record this in a parenting agreement. The parenting agreement will record the child's living arrangements that the parents have jointly agreed upon. Parenting agreements are often less time consuming and less costly in comparison with having the matter dealt with by the Family Court. Parents can also elect to have their parenting agreement made into a formal court order by making an application to the Family Court.

If the parent remaining in New Zealand does not consent to the child relocating to another country, they can make a Border Alert (CAPPS) listing with Interpol alerting Customs and the New Zealand Police in order to prevent the child from leaving the country. An urgent application can also be filed in the Family Court for an Order Preventing Removal of the child from New Zealand and this Order if granted will remain in place until the child is 16, or until a further Order is made by the Court.

When parents cannot come to an agreement, the parent wishing to relocate the child to another country can apply to the Family Court for permission. The threshold is high because relocation overseas is likely to affect the child's relationship with

the parent remaining in New Zealand. Under Section 4 of the Act, the welfare and best interests of the child must be the first and paramount consideration when making decisions for the child.

If the child leaves New Zealand without the prior consent of both parents, the child may be returned under the Hague Convention on the Civil Aspects of International Child Abduction ('Hague Convention'). There are 89 countries and entities that are signatories to the Hague Convention including New Zealand. The Hague Convention would return the child to New Zealand so that the dispute can be heard in New Zealand.

Parents must consult with one another and make these decisions in accordance with what is in the best interests of the child.