

What happens if you don't have a Will?

You will cause your family unnecessary additional grief and expense - and it's so easy to avoid.

The law dictates how your estate will be divided if you die without a Will and the following is a simplified list of those provisions:

1. If you leave a spouse (married or de facto), and no children all to spouse.
2. If you leave a spouse and children, basically, the first \$200,000 to spouse and balance as to 50% to spouse and/or 50% to children equally.
NB The rules become quite complicated if you leave a married spouse and a de facto spouse and children. Failing to get divorced and not making a Will, can add incredible complications for your loved ones.
3. If you leave children and no spouse, all to children equally.
4. If you leave no children or spouse then your estate will go to your parents, equally.
5. If no spouse, no children and no parents, then it will go to:
 - i) siblings of the whole blood, then
 - ii) siblings of the half blood, then
 - iii) grandparents, then
 - iv) uncles and aunts of whole blood, then
 - v) uncles and aunts of half blood

If there are no persons surviving you in these categories, then your estate will pass to the Crown.

It will be a rare occurrence that this statutory order will be exactly as you would want it. It will always cause more work and costs if you don't leave a Will.

It is always worth your while to get your "legal" house in order whilst you can - you never know what's around the corner.

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Property Settlement

Don't wait until your family home sells before doing something about your family law property settlement

Once their marriage breaks down, many people think that they need to wait for their family home or other investment properties to sell before they can begin their property settlement negotiations. This is not correct and, in fact, it's much better to have at least started negotiations with your former spouse and possibly even reached agreement, before the sale goes through. And possibly before the property even goes on the market.

The biggest advantage in doing so before selling your home is that the agreement that you reach with your spouse can deal with such things as the way the property is to be offered for sale, which real estate agent is to be appointed, the way in which the sale price is to be decided or whether the property is to be auctioned. Other common issues that arise include things like who is to keep paying the mortgage, rates and insurances until the property sells and whether the person currently living in the home has to keep it in a nice condition so that you achieve the best possible price.

An agreement such as this can also provide you with some certainty as to what share you are to eventually receive at settlement, which may even allow you to buy another home immediately and move straight from one property into the other.

If you wait until the property sells before making any decisions or reaching agreement about how the proceeds of sale are to be divided up, the proceeds will need to be kept in a real estate agent's or law firm's trust account until you do reach agreement. The money will not earn interest and neither of you can move on and buy another property until the property settlement has been concluded. But, worse than that, where will you live while all of this is being sorted out?

Once you and your former spouse have decided that you aren't getting back together, we recommend that you both begin discussing how you intend for your assets and liabilities to be divided. If neither of you is able to refinance and buy the other person out of the property, you may agree to put the house on the market. Seek legal and financial advice before doing so to make sure that this is your best option.

Ninety-five percent of Family Law matters settle through amicable agreement. The best option is to have your agreement put into writing by a solicitor to protect both you and your former spouse and your future assets.

Contact our Family Law team for assistance.

Bill McGookin

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Caldwell Martin Cox wishes to extend to you the compliments of the season and note that our offices will be closed from 5pm Thursday 22 December 2006 until Monday 8 January 2007.

Changes to Employment Law

Most people would be aware that the Federal Government's WorkChoices Legislation was recently upheld by the High Court. If you are either an employer or an employee it is important that you understand the significant changes that have been brought to the law of unfair dismissal by this legislation.

Now corporate employers with 100 or less employees cannot have claims made against them for unfair dismissal and, even where there are more than 100 employees, an employee is also no longer able to claim that they have been unfairly dismissed if the reasons for dismissal include "genuine operational reasons". As yet the law on what constitutes genuine operational reasons is still to be developed. A claim can still be made however for unlawful dismissal.

These recent changes have made it more important for employers or employees to obtain good legal advice. Our firm has many years experience in dealing with employment matters both on behalf of employees and employers. If you require further information contact **Geoff Lloyd** at our **Camden Office** or **Natalie Cavaleri** at our **Narellan Office**.

Protect Your Lease - Understand Your Option



A recent NSW Court of Appeal decision (Lifoon Pty Ltd -v- Gillard and Ors) found that, on the specific facts of that case, an option to renew the lease was properly exercised orally, notwithstanding the lease required it to be exercised in writing.

Two major Court actions were needed, costing huge amounts of money, to achieve this decision and to protect a tenant's livelihood, because the tenant had failed to comply precisely with the terms of the lease.

Tenants must understand the option provisions of their lease. When parties sign a 3 x 3 year lease, it is not a 6 year lease. It is a lease for 3 years and then if the TENANT chooses (remember it is the tenant's option, not the landlord's) AND if the tenant exercises the option correctly, then the landlord **must** grant a NEW LEASE.

To exercise the option properly, the lease normally requires:-

- (a) notice in writing be given to the landlord within a specific time frame set out in the lease; and
- (b) that there is no subsisting breach of the lease at the time of exercising the option.

If the tenant does not satisfy all of these requirements, the landlord does not have to grant a new lease and the tenant could be evicted at the end of the term - without compensation for the loss of their business.

There is no requirement that the landlord must give any reminder as to when the option must be exercised.

It is essential parties know all of the terms of their lease in order to protect their business. Contact **Angus Cox** at our **Picton Office** or **Chris Paul** at our **Camden Office** for professional advice on these matters.

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Going into Business

More and more these days, people are going into business for themselves out of frustration with their present job, to earn a better living, to be independent, or because they want a new challenge in life. Whatever the reason may be for your choice, you need to ensure that your interests are properly protected by speaking with the following:

1. An Accountant. You need to ensure that the business you are buying is financially sound. Have an accountant look at the figures of the business you are purchasing and make sure that you obtain copy of tax returns and financial reports prepared by an Accountant.
2. A Financial Advisor. Make sure you are in a financial position to take on the new business. Consider the effects of leaving your job to start the business and what those effects may be on your family. Can you afford to take on the business and how will your finances be structured?
3. Your Legal Advisor. Speak to your legal advisor and seek advice on the Contract for purchase, the structure, your legal obligations as owner of the business and other matters that are associated e.g. if the business is a franchise - what are the pitfalls, do I want to be bound by the existing lease or what will happen to my personal property if the business fails?

If you do need help in purchasing a business we are able to assist you. Caldwell Martin Cox has qualified staff in the area of business, whether it is purchasing an existing or starting a new business. We will work closely with your accountant, financial advisor and/or broker to ensure the best rewards for you. If you need assistance, please contact Natalie Cavaleri at our Narellan Office or Chris Paul at our Camden Office.

Natalie Cavaleri
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Summer 06/07

New Sentencing Options in Drink Driving Matters

Many people may not be aware that the State Government has introduced a new option for people charged with drink driving offences - the Interlock Device. As nearly all drink driving offences these days result in an automatic loss of licence i.e. the Magistrate has no discretion to avoid a loss of licence, any option that would enable a person to commence driving sooner must be seriously considered.

The interlock program uses an electronic breath alcohol analyser device wired to the ignition of a driver's vehicle which will restrict driving when a person has a blood alcohol concentration above a certain level. By participating in this program a driver possibly will be able to get their licence back earlier than they would otherwise although subject to the use of this device.

It is important to note however that this program is only available at the time of the matter going to Court and a suspended driver cannot apply at a later date for consideration under the program.

If you have any questions about this matter or any driving offences please contact Geoff Lloyd or Caroline Holt at our Camden Office, Jillaine Duve at our Picton Office or Kristy Faida at our Tahmoor Office.

In hindsight, had there been a formal written partnership agreement in place, the roles, responsibilities, and terms of the partnership would have been clear and the time and costs involved to resolve the matter would have been minimal. Sadly that wasn't so in this case.

So, if you are a shareholder of a company or a partner in a partnership, please consider preparing the necessary documents to save possible future problems.

If you need assistance in preparing a shareholders agreement or partnership agreement, please contact **Natalie Cavaleri** at our Narellan Office or **Chris Paul** at our Camden Office.

Young Drivers and the Law



There has been much press coverage in relation to what the Law should be in relation to young and inexperienced drivers. The Law is as follows:-

- the RTA may suspend the licence of a P plate driver who incurs 4 or more demerit points - this decision can be appealed in Court (unlike the case with an adult driver who has incurred 12 points in a three year period).
- Any holder of a Learner's Permit or Provisional Licence is subject to what is called the "novice" range for drink driving matters. This means that any concentration of alcohol up to .02 grams per 100ml results in an automatic loss of licence for a minimum period of 3 months.
- Speed limits apply to young drivers as follows:-

Learners	80 kilometres an hour
P1 (red P's)	90 kilometres an hour
P2 (green P's)	100 kilometres an hour
- Holders of P1 and P2 licences are restricted from driving certain high performance vehicles. These are generally vehicles with 8 or more cylinders or which are turbo charged or modified.

We have a team of experienced lawyers who can assist in any driving or traffic matter. Call any one of our four offices for further assistance.

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Partnership and Shareholder Agreements



Are you in a partnership and don't have a partnership agreement? Or are you a shareholder of a private Company and you don't have a shareholders agreement? If you answered 'Yes' to either of the above questions then you need to read on.

A recent client was involved in a partnership which had been in place for over 3 years. During this time, our client's business partner denied access to the books and records of the partnership and information was not forthcoming from the partnership's Accountant.

Upon finally gaining access to the books and records, our client noted that there were financial payments made to the other partner which had not been agreed and were not previously within our client's knowledge.

In the end, as there was no formal written partnership agreement between the parties, the verbal terms of the partnership came into question. After some long negotiations a resolution was finally reached between the parties to dissolve the partnership and settlement terms were also agreed.

Who's where and what do they do?

Area of Law	Camden	Narellan	Picton	Tahmoor
Conveyancing	Chris Paul Lyn Harrison	Bill McGookin Natalie Cavaleri	Angus Cox Leanne Anderson	Belinda Dunkley
Estate Planning	Chris Paul	Bill McGookin	Angus Cox Jillaine Duve	Kristy Faida
Family Law	Caroline Holt	Bill McGookin	Jillaine Duve	Kristy Faida
Commercial Leases	Chris Paul	Natalie Cavaleri	Angus Cox Leanne Anderson	Belinda Dunkley
Leases & Sale and Purchase of Businesses	Chris Paul Caroline Holt	Natalie Cavaleri	Angus Cox Leanne Anderson	Belinda Dunkley
Court Matters /Damages	Caroline Holt Geoff Lloyd	Bill McGookin	Jillaine Duve	Kristy Faida
Criminal Law	Geoff Lloyd		Jillaine Duve	Kristy Faida
Debt Recovery	Caroline Holt Geoff Lloyd	Natalie Cavaleri	Jillaine Duve	Kristy Faida
Bankruptcy/Insolvency	Geoff Lloyd	Natalie Cavaleri		
Unfair Dismissal/ Employment Law	Chris Paul Geoff Lloyd	Natalie Cavaleri		
Family Provisions (challenging wills)	All enquiries to Angus Cox & Geoff Lloyd			
Personal Injury	All enquiries to Geoff Lloyd			
Workers Compensation	All enquiries to Geoff Lloyd			
Medical Negligence	All enquiries to Geoff Lloyd			

Our services include:

- wills and estate planning
- family law
- property law and conveyancing
- retail/commercial leases
- business law
- criminal law
- civil litigation
- employment law
- mediation and dispute resolution

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Electronic Newsletters

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Send an e-mail message to help@cmcox.com.au with the words "Newsletter" in the subject line, and provide your name and details in the message.

On receipt of your reply, we will delete your name from the "hard copy" mail list, and send you future newsletters by e-mail.



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