



LEGAL Health

check UP

What
Shape is
Your Legal
Health in ?

women's
legal
service
tasmania

Introduction

WHO ARE WE?

The Women's Legal Service is a free community legal service funded by the Commonwealth Attorney-General's Department. Whilst our offices are in Hobart we provide legal services for women throughout the state.

You can call us on our free statewide telephone advice line if you think you have a legal problem or you want to find out about your legal rights. We provide advice on almost any area of law. If you are not sure if you have a legal problem call us to find out.

WHAT CAN WE HELP YOU WITH?

The Women's Legal Service provides free and confidential advice and referral on all legal matters including Family Violence, Family Law, Civil and Criminal Law, Wills and Property Law. Our primary contact is through our free telephone advice line.

In addition to providing legal advice we conduct community legal education (CLE) seminars and workshops throughout the community and publish information brochures and booklets. Most of these publications can now be found on our website.

WHY A BOOKLET ABOUT LEGAL HEALTH?

This booklet aims to encourage people to take basic steps in their day-to-day life, which will help ward off legal nasties and other situations, which could otherwise be avoided.

Your physical health is very important but so is your legal health. Taking basic steps like the ones outlined in this booklet and knowing your rights or where to go to get the right advice can be the difference between legal health and a legal disaster.

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WHAT IS LEGAL HEALTH?

Everyone knows that by eating the right foods, having enough sleep and exercise and avoiding stress you can stay healthy, strong and be better able to ward off illness.

Just like your body your “legal health” needs attention. By following some simple steps your legal health can also be strong and you can avoid or minimise problems that could otherwise be expensive, time consuming and stressful.

There are certain events that most people face in life, such as entering or exiting a relationship, buying, selling or renting a house, the death of a loved one and possibly being questioned or arrested by the police.

By being informed and by following some simple steps you can be prepared for these life events, even the unexpected ones.

GETTING STARTED - YOUR BASIC LEGAL HISTORY

Much like a doctor checking your throat, ears and glands we have nominated three essential items that we believe are the foundations for good legal health. Read through them and see how you score.



A Will

Everyone over the age of 18 should have a will. This is one of, if not the most, essential pieces of equipment in achieving a healthy legal status. Making a will ensures that your wishes are followed after your death.



A Reliable Postal Address

Everyone needs a reliable postal address. If you do not open and read your mail regularly you may miss important letters, bills or notices. If you ignore your mail, in particular your bills, trouble will find you.



A Safe Place for Important Documents

Everyone needs a safe drawer or filing system to store their important documents. It is best if this is divided into categories and organised. Get into the habit of filing your documents as soon as you are finished with them.

If you didn't score 3 out of 3 then you have some work to do but the good news is that a deficiency in any or all three of these items can be easily cured!

If you scored 3 out of 3 then you are off to a good start but you are nowhere near achieving a healthy legal status - there is more to be done yet!

Healthy Habits

Some basic check lists for day-to-day situations



Now that we have examined your basic legal history, we will have a look at your presenting legal problem and provide treatment to enhance your legal health. As a starting point we prescribe these simple to follow checklists. A checklist a day keeps the lawyer away!

Consider what other documents, apart from a will, you might need once you turn 18. These include: enduring power of attorney, power of attorney and enduring guardianships.

Be careful with agreements, contracts and documents by:

- ☐ making sure they are in writing;
- ☐ not signing them without knowing what they mean;
- ☐ reading them carefully and completely;
- ☐ pointing out and amending any information that is “wrong” in the document;
- ☐ not signing them “on the spot” if you feel pressured to sign them;
- ☐ asking for help or advice from someone independent like a lawyer as to what they mean if you don’t fully understand the contents;
- ☐ keeping a copy of what you signed;
- ☐ taking notes when you talk to people about any agreements or contracts;
- ☐ storing them all together in a safe and secure place.

There are some documents that you need to keep for up to seven (7) years:

- ☐ bank statements, cheque butts and all banking materials;
- ☐ tax returns and proof of tax deductions such as receipts and invoices;
- ☐ insurance policies and correspondence relating to insurance claims;
- ☐ if you own a business you should check with your financial advisor on how long you are required to keep financial documents.

All of the above suggestions are simple to follow through, and are easily adapted to become your everyday habits. Prevention can be the best cure!

One of the most important things to remember is if you are unsure about something then seek advice sooner rather than later - ignoring a problem will not make it go away! Legal health is just like your physical health, it needs to be checked from time to time.

These check lists are not exhaustive - they are just a place to start to help you think about what you might need to do in certain situations.

Lifestyle Documents

Planning for your Future Care

Many people have strong opinions and wishes as to who they want to inherit their possessions, and how they wish to be cared for if they lose the ability to express these wishes themselves.



WILLS

Reading this booklet you might be under the impression that we think wills are pretty important. They are!

Why do I need a will?

- to make sure your property goes to the people that you want to have it after your death;
- to prevent confusion and further heartache for your loved ones after your death.

When do I make a will?

- when you turn 18 you should make your first will.

When should I review and/or revise my will?

- when you get married or register a significant relationship;
- when you get divorced or revoke your deed of relationship;
- if your will is destroyed;
- if you have children;
- if you buy or sell property;
- if you receive an inheritance;
- if you win the lotto!;
- if you are moving interstate or overseas or if you have recently moved here;
- one of your beneficiaries or executors dies;
- regardless of an absence of significant events, every 3 to 5 years.

POWERS OF ATTORNEY

A Power of Attorney is the document that gives another person the power to act on your behalf.

There are two types of Power of Attorney:

- an ordinary Power of Attorney - ends if you lose mental capacity.
- an Enduring Power of Attorney - continues even if you lose mental capacity.

Lifestyle Documents

A Power of Attorney allows the attorney to do anything that you can legally do regarding your finances and property. They cannot make personal, medical or lifestyle decisions for you (you can appoint an Enduring Guardian for that).

You may need a Power of Attorney if you are unable to look after your affairs. This could include travelling overseas and physical or mental health reasons.

Both types of Power of Attorney end if:

- you die;
- you become bankrupt or insolvent;
- you revoke it.

A Power of Attorney needs to be in the correct form and registered with the Recorder of Titles. You should review it much the same as you do your will.

Your attorney should be someone you trust.

ENDURING GUARDIANSHIP

An Enduring Guardian is someone who has the power to make personal, medical and lifestyle decisions for you.

When might I need an Enduring Guardian?

- if you have strong opinions about medical treatment you may need, such as early termination of medical treatment or “do not resuscitate” orders.
- if you have been diagnosed with a degenerative medical condition such as dementia and have a specific person you trust to carry out your wishes when you are no longer able to express them.

Your Enduring Guardian should be someone you trust.



Relationships

MOVING IN TOGETHER

Before you move in together you should:

- make a list of items you have contributed to the household;
- revise your will;
- decide if you want to enter a personal relationship agreement concerning your finances;
- notify Centrelink if you receive a benefit from them;
- consider how you will divide and pay the household expenses.

GETTING MARRIED

Before you get married you need to:

- choose an authorised minister of religion or a civil marriage celebrant;
- complete a Notice of Intended Marriage Form;
- lodge the Notice of Intended Marriage with the proposed celebrant at least one month before the day you intend to marry on;
- decide if you want to enter a binding financial agreement.

Both the Bride and Groom have to provide the celebrant with:

- a birth certificate;
- a certificate of divorce or decree absolute if you have been married before;
- a full death certificate if you were married before and your spouse died;
- any other information that the celebrant may require.

Once the ceremony has occurred:

- make sure that your celebrant has lodged the documents necessary to register your marriage;
- apply to the Registry for a certified copy of your Marriage Certificate.

Name change after marriage is customary not compulsory, but if you do change your name you need to notify such bodies as:

- your bank and credit card company;
- any finance or loan providers;
- your insurer;
- Government agencies such as Medicare, Centrelink or Child Support;

Relationships

- your employer;
- the electoral roll;
- the Registrar of Motor Vehicles (if you hold a driver's licence);
- the Immigration Department if you have a passport that needs to be re-issued;
- register the change with Births, Deaths and Marriages.

Now that you're married:

- you should both review and re-write your wills to take in to account changes to beneficiaries or executors;
- you should review your joint financial and property arrangements;
- contact Centrelink if you are receiving a benefit from them.

REGISTERING YOUR SIGNIFICANT RELATIONSHIP

A significant relationship is a de facto or same sex relationship.

Before you register your relationship you need to:

- decide if you want to enter a personal relationship agreement concerning your finances.

To register your relationship you need to:

- complete an Application to Register a Deed of Relationship;
- pay a prescribed fee;
- provide appropriate identification.

It is now possible to have a ceremony although it is not a legal requirement. If you do have a ceremony you can have the registration dated to the same day. A decorative Certificate of Registration is available.

Once your relationship is registered:

- you have what is called a Deed of Relationship;
- you should both review and re-write your wills to take in to account changes to beneficiaries or executors;
- you should review your joint financial and property arrangements;
- contact and advise Centrelink if you are receiving a benefit from them.

HAVING A BABY

Before your baby arrives you need to:

- review and revise your will;
- consider what parental and maternity leave you may be entitled to.

Relationships

Once your baby arrives you need to:

- obtain a Birth Registration Statement from the hospital or midwife, or fill in a Birth Registration Statement if it is a home birth;
- lodge the Birth Registration Statement within 60 days of the baby's birth;
- be aware that there is no fee for registration;
- contact Centrelink to register for any entitlements that you might be eligible for.

When you register baby's birth you should remember that:

- baby has to go through life with the details you put on their birth certificate so think long and hard;
- once the birth is registered it can be difficult to make any changes;
- it is preferred that both parents sign the Registration Statement;
- if only one parent is on the birth certificate a letter to the Registrar explaining the omission of the other parent along with their details will need to be attached;
- a birth certificate is not provided until you apply for it.

To obtain a birth certificate you need to:

- fill out an application form;
- pay a prescribed fee;
- show appropriate identification.

SEPARATION

Before you separate you should:

- make sure you have somewhere to stay;
- review your will;
- review your personal relationship agreement or binding financial agreement if you have one;
- plan what items you want to take with you;
- compile a list of what you are taking and what you are leaving;
- consider what arrangements you need to make for your children;
- obtain legal advice as to your financial entitlements.

Once you have separated you should:

- revise your will;
- note your actual date of separation;



Relationships

- advise Centrelink if you receive benefits from them;
- notify your bank, employer and other important entities of your new address;
- contact the Family Relationship Centre to organise mediation concerning arrangements for your children;
- contact a dispute resolution service to help you mediate your property settlement or contact your lawyer;
- open your own bank accounts and cancel any joint credit cards.

You should also:

- avoid starting a property settlement until you are ready to do so;
- make sure you get advice about any limitation dates to have your property settlement started in;
- make sure that appropriate arrangements are made so that the mortgage continues to be paid along with any other loans or bills from the relationship until a final settlement is reached - do not just stop paying;
- contact your bank or financial institution if you think you may have trouble paying your mortgage or loan.

DIVORCE

Divorce in Australia is “no fault” so you do not need a reason other than the marriage has broken down irretrievably in order to apply for one.

Before you apply for a divorce you need to:

- make sure that you have been separated for more than 12 months and one day;
- be certain that your relationship has ended and that there is no likelihood that you will get back together;
- revise your will “in contemplation of divorce”;
- review your binding financial agreement if you have one, or if you do not, review any agreement concerning your property that needs to be finalised.

To make an application for divorce you:

- have to have been separated for at least 12 months and one day;
- need to establish that the marriage has broken down irretrievably;
- have to show that appropriate parenting arrangements have been made for any children under 18;
- provide proof of service in the appropriate form if the application is not a joint one;
- pay the required fee or apply for an exemption from the fee.



Relationships

Once your divorce has been granted:

- be aware that you have a limited time to finalise any outstanding property settlement issues;
- remember that the Court does not deal with your property or children's matters unless you apply to them separately from and in addition to your divorce application.

REVOKING YOUR DEED OF RELATIONSHIP FOR A SIGNIFICANT RELATIONSHIP

Before revoking your Deed of Relationship:

- be certain that your relationship has ended and that there is no likelihood that you will get back together;
- remember that the limitation for when you have to have dealt with any joint property starts when you separate, not when you revoke your Deed;
- review your personal relationship agreement concerning your finances if you have one;
- revise your will in contemplation of your revocation.

To revoke a deed of relationship you have to:

- complete an Application for the Revocation of a Registered Deed of Relationship;
- pay the required fee;
- provide identification;
- provide proof of service if the application is not a joint application.

After you have revoked your Deed of Relationship:

- remember that the limitation for when you have to have dealt with any joint property started when you separated, not when you revoked your Deed;
- remember that the Court does not deal with your property or children's matters unless you apply to them - it is not done as part of the revocation process.

WHAT HAPPENS TO THE KIDS IF WE SPLIT UP?

It is important to focus on what is best for the children and this can be done by:

- trying to mediate together details as to who the children will live with and who the children will spend time with rather than going straight for your lawyers;
- think hard about whether the proposals you are making are in the best interests of the children, rather than about what you want;
- try not to display open hostility towards your ex spouse or partner in front of the children;
- do not run your ex spouse or partner down in front of, or to the children;
- pay the child support you are deemed liable for.

Relationships

Remember:

Shared parental responsibility refers to the quality of parenting not the quantity. It does not mean the child spending time equally with each parent.

Dispute resolution is the preferable way to try and resolve issues concerning the children. However, we strongly suggest that you obtain legal advice before you start the dispute resolution or mediation process.

WHAT HAPPENS TO OUR PROPERTY IF WE SPLIT UP?

Regardless of whether you were married or in a significant relationship there are a number of ways to work out how your property should be divided.

Things to remember when dividing your property are:

- mediation can be the least expensive way to resolve your dispute but before you start negotiating you should get legal advice;
- if you can't reach an agreement and have to go to court it will be expensive and it is likely that neither party will be happy with the outcome;
- property division is completely separate from divorce or revocation of a Deed of Relationship;
- time limits apply to completion of a property settlement;
- these time limits differ, depending on whether you were married or in a significant relationship.

You can prepare for your property settlement by:

- making a list of your assets;
- making a list of your liabilities;
- obtaining financial advice;
- talking to your financial institution to see if you can re-finance your mortgage or loans if necessary;
- think about what your ex spouse or partner might want.

Your property settlement should be a full and final severance of your financial relationship. Once it has been completed it cannot be undone unless there has been some sort of unconscionable conduct or duress, so proceed with care.

Putting a Roof over your head



MOVING HOUSE

Throughout life we all move several times. When you do move remember to:

- notify people of your change of address, especially if your mailing address has changed;
- have your mail forwarded;
- review your will;
- notify the electoral office.

BEING A TENANT - RENTING A HOUSE TO LIVE IN

Before you start looking for a property you should:

- know which suburb you want a home in and what size property you need;
- work out and set your rental budget;
- have a think about what you need in a property such as parking, disability access, a backyard or a courtyard;
- know who you intend to live with.

When you have found a property you like:

- ask lots of questions such as can you have pets, is there parking, can a landline telephone be connected and if you are responsible for the gardening;
- never assume anything about the property - always ask - for example there might be a car space but it might not come with the property;
- can you reasonably afford the rent and still manage your other bills;
- take your time looking through it and make sure that it has everything that you need in a property.

If your application is successful:

- make sure the property is appropriate for your needs and that you can afford the rent;
- insist on a written lease;
- do not sign the lease unless you completely understand it;
- get advice if you do not understand the lease document;
- make sure the lease is for the right term and that it contains the correct details of your tenancy;
- make sure you get a copy of the lease and store it in a safe place;

Putting a Roof over your head

- make sure that everyone who will be living there is on the lease and not just you;
- you will need to do a thorough condition report which should be done before you move in - note and photograph any pre-existing damage;
- you will have to pay a bond equal to up to 4 weeks rent. This will be held by the Rental Deposit Authority until the end of the lease;
- make sure you know the processes for having repairs done, who to call, what you will have to pay for and what the landlord will have to pay;
- ensure that you know how much rent is due and when it is due and pay it on time.

Things to think about:

- your landlord will generally have insurance to cover damage to the building and property and public liability but you should take out contents insurance as your landlord is not responsible for this;
- a lease can be amended by a Magistrate to remove a person as a tenant if one of the parties has to move out of the property due to family violence.

When your lease comes to an end:

- you have to leave the property as you found it;
- you have to pay for any damage that you or your friends may have done;
- the bond you paid will only be returned if the landlord is satisfied that there has been no damage to the property and that no rent is outstanding;
- do not forget to hand in all the keys.

BEING A LANDLORD - RENTING A HOUSE OUT

Prior to putting the house on the rental market:

- ensure the property is in a fit state for renting;
- consider employing a property agent to look after the property;
- make sure your property is properly insured.

You can negotiate with the property agent:

- their commission;
- any advertising costs;
- the manner in which the property will be advertised;

Putting a Roof over your head

- whether you can list with more than one agent at a time;
- the value of the property and a realistic weekly rental price;
- the service they provide in managing the property.

If you decide to engage a property manager you will probably sign a written agreement on the above issues. Ensure that:

- you read the contract carefully and completely prior to signing it;
- you understand the contract in its entirety prior to signing it;
- you seek advice from your lawyer if you require clarification on any issues that you do not understand;
- ensure you keep a complete copy of the contract.

In deciding on a potential tenant you will need to consider a number of factors such as:

- consider the length of the lease they are seeking;
- their ability to pay the stated rent;
- the number of people they are proposing to have living at the property;
- whether they wish to have pets at the property;

Once you decide on a particular tenant your real estate agent will get them to sign a lease for the property. Ensure that:

- you are happy with all the details and contents of the lease agreement prior to it being put to the tenants to sign;
- if there are any variations to the lease agreement ensure you are aware of the impact of this and sign and date the new lease agreement;
- you get a copy of the lease agreement;
- you understand your obligations under the lease, including your ability to terminate a tenancy agreement or increase the rent.

BUYING A HOUSE

Prior to making an offer you should:

- speak to a financial institution to see how much money you are able to borrow;
- find out about any financial incentives that may be available from the Government;
- check your contract for the amount of your deposit - generally you will need a deposit of between 5%-10%.

Putting a Roof over your head

Be aware that there can be costly hidden expenses, such as:

- government stamp duty, that is the stamp duty on the land;
- loan application or establishment fees;
- mortgage insurance;
- legal expenses such as conveyancing costs;
- inspection expenses.

Making an offer

When you have a property you are interested in, you may wish to make an offer on it, before you do you should:

- do a title search to find out if there are any covenants or restrictions on the property;
- do a general structural inspection;
- have a pest control report;
- inspect for environmental hazards such as asbestos, lead and mould;
- search reports on soil stability - eg Rosetta landslip;
- inspect to see if there are any unapproved structures on the property, such as a deck;
- do not feel pressured into making an offer, take your time.

Signing the Contract

If you make an offer on a property and the vendor accepts it, you will then be required to sign the contract to secure the property. In signing the contract you should:

- read the contract carefully and completely prior to signing it;
- understand the contract in its entirety prior to signing it;
- seek advice from your lawyer if you require clarification on any issues that you do not understand;
- understand your obligations, as they arise under the contract, including any time frames for completion of matters agreed in the contract;
- if you make any variations to the contract ensure they are documented in the contract and signed and dated by both parties;
- keep a complete copy of the contract;
- pay the agreed deposit;
- get insurance that will cover the property from the time the contract is signed.

Putting a Roof over your head



Settlement

- the date of settlement will be stated in your contract;
- subject to successful completion of all the conditions of the contract you will become the new owner of the property on this date;
- you should do a pre-settlement inspection of the property to ensure it is in the same condition as it was when you signed the contract;
- ensure that any agreed fixtures and chattels are present;
- if you are purchasing the property with someone else you will need to consider and discuss with your lawyer how you wish to hold the property on the certificate of title, that is as joint tenants or tenants in common prior to the settlement.

SELLING A HOUSE

Prior to putting the property on the market you will need to prepare the property for sale.

Negotiate with various real estate agents for them to list your property with them. Issues that will need to be discussed include:

- their commission;
- any advertising costs;
- the manner in which the property will be advertised;
- whether you can list with more than one agent at a time;
- the value of the property and a realistic asking price;
- whether to sell by auction or privately;
- any other matters relevant to your circumstances;
- in signing any agreement with your chosen real estate agent ensure you read and fully understand any document in its entirety;
- if you are unsure seek advice from your solicitor.

Accepting an offer

- your real estate agent will put all offers for the property to you;
- the offers should be in writing and in the form of a contract;
- ensure that you are aware of any conditions attached to the offer;
- ensure that you fully understand the impact of any conditions attached to the offer and insist on them in writing;
- do not feel pressured to accept the offer if you aren't happy with it;
- the offer should be in the form of a contract which will be binding so obtain legal advice before you sign it.

Putting a Roof over your head

Signing the Contract

If you accept an offer, you will then be required to sign the contract. In signing the contract you should ensure:

- you read the contract carefully and completely prior to signing it;
- that any fixtures that are to remain with the property are clearly stated;
- that any chattels that are to remain with the property are clearly stated;
- you understand the contract in its entirety prior to signing it;
- you seek advice from your lawyer if you require clarification on any issues that you do not understand;
- you understand your obligations, as they arise under the contract, including any time frames for completion of matters agreed in the contract;
- if you make any variations to the contract check that they are documented in the contract and signed and dated by both parties;
- you keep a complete copy of the contract.

Settlement

- the date of settlement will be stated in the contract;
- immediately prior to the settlement you will need to ensure that the property is in the same condition as it was when the contract was signed;
- you will need to ensure that any conditions in the contract that you are responsible for have been met;
- once settlement has occurred you will no longer be the owner of that property.

Money Money Money

WATCHING OUT FOR THE CREDIT CRUNCH

We all get those credit card offers in the mail and we've all seen the advertisements for "interest free" periods on finance for furniture and other household goods in the big stores. How does it really work?

"I've been offered a credit card through the mail:"

- be careful not to have too many credit cards;
- remember that you have to pay the money back;
- read the product disclosure statement and make sure you know what the different interest rates and fees are for the card.

"I bought some furniture interest free but I was approved for additional finance:"

- do not spend more than your budget allows;
- remember that just because you have been "approved" for a line of credit, does not mean you can afford it or that you have to accept it;
- be wary of the high interest that applies once the interest free period ends;
- be wary of any administration costs associated with the purchase;
- try to pay your debt off before you have to pay interest;
- check which finance provider "underwrites" the loan for the goods or store card that you have been offered.



MORTGAGES, PERSONAL LOANS AND OTHER FORMS OF FINANCE

At some point almost everyone will purchase a big-ticket item such as a car or house. This will generally require a loan or mortgage.

When you are entering a contract for finance you should:

- read the finance agreement carefully;
- never sign anything you do not fully understand;
- only borrow as much as your budget allows - over extending your finances may see you losing the item you purchased and still owing the remainder of the debt;
- make sure you understand the conditions of your loan, such as any fees and charges payable;
- make sure you are aware of how much your repayments are and when they are due;
- keep a copy of your finance agreement and any correspondence concerning your loan;

Money Money Money

- know whether your interest rate is fixed or variable;
- know how long your loan is for;
- if you are using a finance broker check what fees they may be charging you;
- check to see which finance provider is underwriting the loan you have been offered.

Not all lenders are “conscientious” and they may not lend money responsibly. Many will offer you more money than you ask for. It is up to you to make sure that you do not borrow more money than you can afford. There are many services that can assist you in making such decisions.

EMAIL OFFERS AND OVERSEAS LOTTERY WINS

If you receive an unexpected email offering to give you money, telling you that you have won an overseas lottery or saying that you are the beneficiary of a will then it is more than likely a scam. Such emails are designed to convince you to disclose your personal information and bank account details.

If you receive such an email:

- never give them your personal details;
- never give them your bank details or credit card details;
- block the sender and mark it as junk mail;
- delete the email.



RENT TO BUY

Some companies offer the chance to rent an item and then buy it at the end of the lease period. Items offered under rent to buy schemes can vary from televisions to houses.

“I am thinking about entering a rent to buy agreement. What should I watch out for?”

- make sure you read and understand the agreement;
- do not sign anything you do not fully understand;
- check the terms of the agreement - do you have to pay a lump sum at the end of the agreement to keep the item?
- do the math - how much are you paying over the rent period? How much is the final lump sum? How do those amounts compare to the value of the item?
- what additional fees or charges apply?

Money Money Money

- if the item breaks who has to pay for the repairs;
- make sure the item is insured against theft or damage - if you lose the item or it is destroyed you will still be liable for the debt.

Rent to buy agreements for houses can be very ambiguous and often see the property remain in the vendor's name until the last of the loan is paid making the establishment of legal ownership of the property difficult to determine.

FINANCIAL ABUSE

Are you experiencing pressure from someone you know to:

- give them money or valuables;
- transfer your property to them;
- change your will;
- grant them a Power of Attorney over your finances?

Such behaviour is considered financial abuse even if it is a family member, friend or neighbour. If this is happening, you should seek legal advice.

BANKRUPTCY

If you find yourself in a position where you are in "over your head" financially and find that you are unable to pay your debts and you cannot make suitable arrangements with your creditors, you may voluntarily petition to become bankrupt.

Bankruptcy should be considered the last resort for "sorting out" financial difficulties, as it will have significant consequences for you and your life.

The advantages of bankruptcy include:

- your creditors will be notified that you have declared bankruptcy and they will not be able to continue pursuing you for payment of the debt;
- most debts will be discharged at the end of the bankruptcy;
- the bankruptcy will last for a minimum of 3 years;
- a trustee will be appointed and they will look at your financial affairs to decide on the best course of action;
- you will be required to report any changes in circumstance to your trustee during the period of the bankruptcy.

Money Money Money

The disadvantages of bankruptcy include:

- some debts will not be discharged by the bankruptcy and you will need to continue to make these payments while you are bankrupt, these include:
 - court fines;
 - HECS/HELP debts;
 - child support payments;
 - debts incurred by fraud; and
 - student loans.
- the trustee will make decisions on what assets will need to be sold to pay your debts;
- you may have to sell your house;
- you will be able to keep certain assets such as a car up to the value of \$5650 and necessary household items and clothes;
- you may have to surrender your passport;
- you may not travel overseas without the written permission of your trustee;
- your bankruptcy will be recorded on your credit record for 7 years. Once your bankruptcy has been discharged this can be noted on your credit record;
- it may affect your ability to gain credit in the future;
- bankruptcy will be permanently recorded on the National Personal Insolvency Index - this is a public record;
- your job opportunities may be affected, especially with jobs handling money.

It is important that if you are having financial difficulties you consult a financial adviser “sooner rather than later” to avoid having to take the final step into bankruptcy. Bankruptcy should always be considered as a last resort.

When Someone Dies

Many people in Australia now die in hospital or a nursing home. If your spouse or loved one dies in one of these places the medical staff or authorities will take care of the formalities.

If someone dies at home you will need to contact their doctor who will explain to you the process involved to obtain a Death Certificate.

REGISTERING THE DEATH

In Tasmania it is a legal requirement to register a death with the Registry of Births, Death and Marriages within 14 days of the death.

There are two types of certificate available:

- standard Death Certificate - contains full details of the deceased person;
- extract of Death - contains name, sex, date and place of death only.

Cause of death is no longer recorded on Death Certificates in Tasmania.

To register a death:

- the attending doctor lodges a Medical Certificate of Cause of Death with the Registry of Births, Deaths and Marriages within 48 hours of the death;
- the funeral director or other person responsible for the removal of the body usually completes a Death Registration Statement with the assistance of the family;
- in certain cases such as a car accident, suspicious death or deaths at home, the Coroner's Office becomes responsible for lodging the Death Registration Statement - this may take 8 weeks or longer for the Death Certificate to be completed;
- if the Coroner has investigated a death you will need to contact the Coroner's Office for further information.

If you are registering the death you need to:

- fill out an application form;
- pay the prescribed fee;
- show appropriate identification;
- lodge your application at Service Tasmania in person or by post.

FIND THE WILL

When someone close to you dies it is important that you find their will. It may be:

- in a filing cabinet or drawer in the house;

When Someone Dies

- in a safe deposit box;
- in a folder with other documents;
- being looked after by a friend or the executor;
- held at a solicitors' office.

If you are the executor of the will you may need to apply for a grant of probate from the Probate Division of the Supreme Court. This will allow you to deal with the deceased's property. It will not be granted until 7 days after death and usually takes 7-10 days to be issued.

Other documents you may need to find:

- bank statements;
- property deeds;
- mortgage details;
- other loan arrangements;
- Medicare information;
- insurance, i.e. life insurance, health insurance;
- superannuation fund information;
- lease agreement;
- taxation records;
- birth and marriage certificates;
- burial plot information;
- pre-paid funeral receipt.



FUNERAL PLANS

- a pre-paid funeral or other funeral plans may have been arranged;
- if you cannot find details of a funeral you can call funeral homes to see if they have a record of a pre-paid funeral held with them;
- there may be funeral plans detailed in the will;
- a funeral service cannot take place until a Death Certificate has been issued;

When Someone Dies

- the funeral home will arrange for the body to be moved;
- they can also arrange lodging the Death Certificate, for notices in the newspaper, flowers, religious services, certificate for burial, cremation or burial plot;
- do not be persuaded to spend more than you can afford on a funeral - the funeral home should give you a quote beforehand.

Who to contact:

- friends and family;
- funeral director;
- religious minister;
- doctor;
- insurance company, especially life insurance;
- the executor of the will.

It may be easier to contact some of these groups in writing:

- Centrelink;
- employers;
- superannuation fund;
- banks and credit card companies;
- public trustee;
- insurance companies;
- health benefits fund;
- Medicare;
- landlord;
- utility providers, i.e. Aurora, phone company, gas supplier;
- local council;
- vehicle registration;
- electoral office;
- Australian Tax Office;
- professionals, i.e. solicitor, accountant;
- post office;
- mailing lists they may be subscribed to - you can ask the Australian Direct Marketing Association to do this for you.

The Police

You're under arrest... or are you?

A police officer can arrest you if they have a reasonable suspicion or belief that an offence has been committed. Arrest does not need to be expressed in words, it can be implied from the circumstances. If you are not sure, you should ask the officer if you are under arrest.



Can the police enter your property?

- an officer cannot enter your property without your permission but there are exceptions;
- police officers may enter your property if they have a reasonable belief a suspect is on the premises;
- police may enter your property if they believe on reasonable grounds that it is necessary to prevent a crime that is likely to cause immediate and serious injury to people or property;
- police officers can also enter your home without your consent if they believe there is family violence.

How much force can the police use in making an arrest?

- police can use reasonable force to prevent the commission of a serious crime or if you are resisting arrest;
- police can damage property if necessary for the purpose of arrest.

If you are arrested:

- the police officer has a duty, if it is practicable, to tell you why you have been arrested;
- you may already be aware of the reason for your arrest based on the circumstances;
- you can be detained for a reasonable time for questioning;
- you have a right to an interpreter;
- before questioning you are allowed to call a friend or relative and/or a legal practitioner;
- the police may refuse your request to speak to someone if they reasonably believe that your communication may lead to an accomplice escaping or evidence being fabricated or destroyed;
- police may also refuse your request to speak to someone if the questioning is urgent for the safety of other people;
- you have a right to speak to a legal practitioner in a place where you will not be overheard;
- if the police interview you, they must record the interview.

The Police

What you need to do when you are questioned or arrested by police:

- you have a moral duty to assist police with their enquiries if you are not under arrest;
- you must not resist being arrested or interfere in the arrest of another;
- you must give your name, address and other requested details;
- you do not have to answer any other questions that police ask you - this is called your right to silence;
- you should not lie to the police or mislead them.

Can the police search me?

- police have a duty to take all reasonable measures to ensure that a prisoner does not escape, injure themselves or others, does not destroy evidence and does not commit further crimes. If they believe a personal search is necessary for these purposes they can do this;
- you should be informed of the reasons for search unless it is clearly obvious;
- the search should be done by a police officer of the same sex as you.

Do you have any other
SYMPTOMS?

Are you showing symptoms that are not described in any of our health checks?

Remember - these check lists are simply a guide to better legal health - they are not definitive and are information only intended as a starting point for you. Do not self diagnose.

If you are experiencing any of the symptoms in this booklet or any that are not described here you should contact us for a full consultation.

Other symptoms may include:

- Adoption
- Employments Issues
- Going to Court
- Neighbourhood Disputes
- Discrimination



Getting Treatment

So now that you have worked out your symptoms and have an idea on what the nature of the problem is, here's how you go about getting treatment for your problem.

It is important that you tell your lawyer the complete truth, even if it is not good for you, so that they can properly diagnose you and prescribe the correct treatment.

Finding a Lawyer:

- you should pick a lawyer who specialises in the area of law relevant to your problem;
- think about what sort of legal issue you have that you need legal advice on - is it family law, conveyancing or a will?
- if you contact a law firm ask the receptionist who the appropriate solicitor to see at the firm is;
- you can contact the Law Society of Tasmania for a referral;
- you can contact the Women's Legal Service for a referral;
- find a lawyer that you like and trust.

Preparing for the appointment:

- think about what documents you may need. These may include contracts, Marriage or Divorce Certificates, relationship or financial agreements, court orders, or any correspondence you have received;
- collect these documents and take them with you to the appointment;
- it is helpful to write a list of dates and events about what has happened;
- it can be easy to forget what you wanted to tell your lawyer so write a list of what you want to say and questions that you have and take it with you.

Remember that everyone's situation is different. Don't rely on what your family, friends or neighbours tell you about their own legal problems, it is important that you get legal advice relevant to your own problem.



Things I Need to Do

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DISCLAIMER

"Legal Health Check up - How is Your Legal Health?" is intended to give general information and suggestions to assist you to protect your legal liability. While we have made every effort to ensure the contents of this publication are accurate at the time of printing the law and services do change. Legal and service exactness is not possible in a publication of this nature. This publication should not be used as a substitute for legal advice.

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Telephone Legal Advice Line:
Freecall 1800 682 468

Telephone Advice Line Opening Times

Monday, Tuesday,
Thursday & Friday
10.00 am - 12.30 pm
and 1.30 pm - 3.30 pm

Wednesday
2.00 pm - 4.00 pm

Face to face appointments
by arrangement

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