

TIME TO REVIEW YOUR AFFAIRS

Many people start off the New Year with resolutions about losing weight; or exercising more; or spending more time with family. There are many others. But how many start the year determined to sort out the many legal affairs that exist?

Wills

A good place to start is with wills. For those who own property jointly, it is not strictly necessary to have a will because with jointly owned property, including real estate, upon the death of one joint owner the property vests automatically in the other joint owner.

But of course this doesn't apply in the situation where real estate is owned by companies. In that case, the shares in the company need to be transferred to the trustees of the estate, if they are not owned jointly. And, if real estate property is owned in shares (say 50/50) then the owner of the deceased's 50% share needs to be set out in the will. Other matters that are often important in wills are testamentary guardians for infant children, and who the trustees are to be. This is critical because trustee decisions must be unanimous, so it is not advisable to choose executors/trustees who may end up in conflict.

Trust deed

If you have a family trust that owns property, maybe 2013 is a good time to review it.

Matters that can form part of a review of the trust deed include the power of appointment and beneficiaries.

The power to hire and fire trustees (the power of appointment) is probably the single most important part of the trust deed. The person (or persons) who decide who the trustees are ultimately controls the trust. Consideration should be given as to who these should be.

In terms of beneficiaries, it is useful to reconsider these. Although beneficiaries under a discretionary trust only have a right to be considered for a distribution of the trust's assets, it can be useful to keep the group of potential beneficiaries as small as possible. It is an unfortunate part of life that family disputes arise, so removing, or adding, potential beneficiaries should form part of any trust review in 2013.

The final part of any trust review should involve a complete asset planning exercise involving wills. Ideally, all assets not already owned by the trust should be left to the trust under a will for distribution according to the trust deed.

Lease renewals

If you are in occupation of a commercial property under a lease, does your right of renewal come up this year?

If it does, most leases say the notice advising of renewal must be given at least three months before the current lease term ends. If this is not done in time, it is possible the landlord could refuse the grant of a further renewed term. Although there are provisions in the Property Law Act that allow the tenant to claim relief against such a decision, these can involve costly court applications. A simple way to avoid this is to give written notice advising of the renewal as soon as the decision has been made, and at least three months before the end of the term.