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Morrows advisors realise Alzheimer's is the curse of estate planning

Laura Harding from Morrows Legal's estate planning team and Renato Manias from our aged care group are currently trying to rescue Larry*, a long term Morrows client's affairs.

A dramatic life event is giving his family and advisors at Morrows a serious wakeup call.

Larry was 73 years old, generally in good health and was recovering well following the life changing events of his second marriage breakdown 12 months prior.

When driving home after a weekend away, Larry's life was irreversibly changed. A serious car accident resulted in Larry's hospitalisation, and a series of medical emergencies then triggered an accelerated onset of Alzheimer's resulting in short term memory loss. Overnight, Larry went from effectively managing his own affairs, to being incapacitated and unable to make decisions.

Luckily for Larry's son Kevin*, Larry had the foresight to attend to his estate planning immediately following the relationship breakdown, appointing Kevin to be his Attorney for financial and personal matters, and updating his Will to exclude his ex-wife.

Nonetheless, the family law matter had not yet been fully resolved, and Larry's former wife Helen* still held several properties with Larry as joint tenants. Properties held as joint tenants transfer to the surviving proprietor upon someone's death and do not form part of the deceased's estate. If Larry died, the properties would transfer automatically to Helen instead of going to Kevin and his sister as Larry intended. The possibility of finalising any family law proceedings after death is complex and limited. Kevin and his sister could not make a claim on the properties under Part IV of the Administration and Probate Act 1958 as the properties are not estate assets. To further complicate matters, Kevin and his sister were children from Larry's first marriage, and it is unlikely they would ever see any benefit from Helen's estate.

Imagine for a moment that Larry had not attended to his estate planning. Suddenly, Larry's former wife Helen would be his Attorney for financial and personal matters under his previous Enduring Power of Attorney. As Larry and Helen were not yet divorced, she would also be the executor and sole beneficiary under his previous Will.

Ultimately, with some sound advice, Kevin should be able to finalise the family law proceedings on Larry's behalf

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and transfer the properties, but the risk of Larry dying before the process is complete remains until the tenancy is severed or the properties are transferred.

The lesson here is although Kevin went to the trouble of getting advice and completing estate planning documents, he did not follow through on the execution of the asset transactions.

As an accountant or professional advisor, you will encounter clients who are undergoing significant changes in their personal and financial circumstances. Sometimes your clients will need a gentle (or firm!) push in the right direction.

Ensure you consider these 5 critical tips for dealing with clients undergoing significant changes to their personal or financial circumstances:

1. Advise your clients to attend to their estate planning immediately when personal or financial circumstances change.
2. Review your client's finances to identify high-risk assets in the event of their untimely death or incapacity, for example:
 - a. Properties held as joint-tenants
 - b. Jointly held bank and investment accounts
 - c. Jointly held shares
 - d. Binding death benefit superannuation nominations or life insurance policy nominations to a former partner or estranged child
 - e. Former partners holding important roles in trusts, SMSFs and companies, such as Appointor, Trustee or Director
3. Refer your clients to seek appropriate legal advice as soon as possible, and encourage them to follow through and resolve matters.
4. Encourage your clients to take a protective approach to assets, such as:
 - a. Carefully considering the ownership of properties
 - b. Establishing trusts where appropriate
 - c. Entering into properly drafted agreements, such as shareholders agreements, with business partners and associates that contemplate a breakdown in the business relationship
5. Never assume that a client's capacity is guaranteed, and don't delay!

Remember Morrows Legal are always happy to chat to you about your client's issues.

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**Names have been changed
This article refers to Victorian jurisdiction, although similar considerations apply in all states and territories.*