

# PUBLIC DEFENDER



with  
Wes Hosking  
publicdefender@heraldsun.com.au

## Q&A YOUR QUESTIONS ANSWERED

### WILL DISPUTES

**Q** MY mother died on December 1. I had power of attorney and am signatory on her bank passbook. My husband and I are joint executors of the will. I am told it will be up to a month before I receive her death certificate. Should I use my money to pay for my mother's bills? Do we need to go to probate?

Margaret Barter, Taylors Hill

**A** SOME banks will accept a certified copy of the will as proof you are your mother's executor and able to use the account to pay her bills. A bank will usually arrange for payment of funeral expenses. Otherwise you may have to use your own money and obtain reimbursement from the estate. You may have to obtain probate depending on the estate's size and nature. Any real estate will require probate for a transfer.

**Q** MY partner of 20 years recently died. My solicitor agrees I qualify as a de facto widow. I am 70 and feel humiliated at having to go cap in hand to my partner's son, the executor, because he made certain promises but failed to mention it in his will. I have no claim on the house but there is a significant amount of cash in my partner's

accounts from which I had assumed I would benefit.

Name and suburb supplied

**A** YOU are likely to be entitled to a significant amount of your late partner's estate whether or not it is provided in his will. You should obtain legal advice about your rights promptly as there is a six-month limit from the date of a grant of probate in which to bring a claim.

**Q** I HAVE been involved in a will dispute for a year. A frivolous claim was put in by a beneficiary and it seems once a will has been contested the executor loses all control while the lawyers battle it out. Surely the law needs to prevent this happening.

Anthony Hodges, Anglesea

**A** I UNDERSTAND your frustration. The executor can't distribute an estate in circumstances where there are issues in dispute. The lawyers acting for the beneficiary should give advice as to the merits of the claim and I would expect that the solicitors for the estate will also have given advice. If the claim is shown to be frivolous the court can ultimately order that the claimant pay the costs incurred by the estate.

### QUESTION OF THE WEEK

**Q** WE are thinking of selling our home and leasing it back from the buyer long-term.

Is it possible to put in place a lease that cannot be broken unless both parties agree?

We don't want to be in a position where 18 months down the track the buyer says: "I'm selling up, so get out."

Lawrie Park, Melton

**A** LEASES are governed by the Residential Tenancies Act. This allows either party to break a lease under certain circumstances.

However, you could consider entering a contract that provides for vendor terms (payment over time). If you do, I would recommend you get some legal advice about your rights and obligations and help getting the contract drawn up.



Ripped off: Derek and Angela Gardner. Picture: ELLEN SMITH

## Hit by bitumen bandits

SHODDY driveway repairers have ripped off unwary home owners in a spate of recent cases across Victoria.

Householders around Knox, in Melbourne's east, Melton, Narre Warren, Cranbourne and the country town of Beveridge have all been hit in recent months.

In one of the worst incidents, an elderly Narre Warren couple were left \$7000 out of pocket by a group of men who promised to pave their driveway. The work was never completed.

### DRIVEWAY CONS

In another case, con men asphalted a driveway in Ferny Creek, but couldn't be contacted to return and remove their rubbish.

Angela and Derek Gardner, in their 70s, know the pain of shoddy repairs.

The Hampton Park couple paid more than \$3600 four years ago to have their driveway resurfaced only to see the colour wash away and the concrete flake and crack.

The Gardners paid with money from a reverse mortgage, demanded in advance, and forked out another \$2000 to have the work redone.

A Consumer Affairs Victoria spokeswoman said bogus driveway repairers were among a range of frauds, sometimes with English or Irish accents, known to travel the state. Householders should get several quotes and never pay until repairs are done properly, she said.

To report travelling con-men phone 1300 558 181.

## Health options

ANDREW DIMSEY



PRINCIPAL LAWYER  
MAURICE BLACKBURN

THERE is a saying that the greatest wealth is health.

In Australia, we generally have access to high-quality health care.

However, our healthcare system can sometimes fail.

When we or our loved ones are sick, often the last thing we think of is understanding our legal rights relating to poor or even negligent medical care. There are a number of practical and legal options available to a person who suffers a bad outcome from poor medical care.

With good communication, problems can often be resolved without the need to go legal, and this should always be investigated first.

Most public hospitals have a patient advocate whose job is to ensure patient concerns are heard and action taken.

The Freedom of Information Act also can be used to access your medical records from public hospitals.

A patient can also make a complaint to the Health Services Commissioner about hospital or medical care.

If a loved one dies in hospital or under suspicious circumstances after medical care, a family can request the Coroner hold an inquest in order to discover the manner and cause of death.

Coronial inquests can result in positive changes being made to medical practice and help improve the quality of care for other people.

Legal information is general in nature and is not to be regarded as legal advice from Maurice Blackburn.

Blog live with Andrew from noon-1pm today  
heraldsun.com.au

Send your legal question to Andrew  
publicdefender@heraldsun.com.au

If you have to fight the system, don't fight it on your own.

Maurice Blackburn  
Lawyers

Since 1919

At Maurice Blackburn we understand that you don't get anything in this world without a fight. Which is why we fight and win for people with TAC, WorkCover, asbestos, superannuation and insurance claims.

We fight for fair.™

Call 1800 241 262 or visit [mauriceblackburn.com.au](http://mauriceblackburn.com.au)

Melbourne • Dandenong • Frankston • Geelong • Mildura • Reservoir • Ringwood • Sunshine • Traralgon • Wangaratta  
By appointment in: Bairnsdale • Ballarat • Box Hill • Cranbourne • Lilydale • Melton • Oakleigh • Pakenham • Shepparton • Warragul • Werribee • Wodonga