

Client Newsletter

Biddulph & Salenger **Lawyers**

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A TAXING YEAR

The federation year disappeared in a cloud of smoke generated by the ferocious Christmas Day fires.

Simultaneously at Ground Zero New York, the last flames extinguished after burning for 3 months.

Former giants HIH, One.Tel and Ansett look unlikely to rise from the ashes.

At a more mundane level, the usual life sustaining activities of Biddulph & Salenger continued and we have appreciated your ongoing support. Clients bought and sold homes, transacted their business and entered and exited relationships and life (*and Sally Skene our licenced conveyancer got married*).

In about 1740 a famous statesman and scientist Benjamin Franklin declared, "Nothing in this world is more certain than death and taxes".

In this newsletter we will not dwell on death. (You can look at our past newsletters on our webpage www.biddsal.com.au to read why you should make or review your will.) Rather we shall provide a few snippets on taxes and costs.

Capital Gains Tax. This tax applies to properties usually being non principal places of residence acquired after September 1985. Properties being formerly places of principal residence should be sold within 2 years of death to avoid attracting the tax. There are important rollover provisions following a family law property settlement.

Land Tax. Many clients have an investment property and are quite surprised at point of sale that they have an accumulated land tax debt.

You may be liable for land tax if the value of the land you own other than your principal place of residence has a total value of \$220,000 or more. Land tax liability is assessed on all land held as of 31 December in each year.

Goods and Services Tax is not payable on the sale of established residential properties as a general rule. However, it may be payable on new residential and also newly renovated property. The sale of commercial properties attracts GST unless it is also the sale of a "going concern" including an enterprise such as leasing. It may be otherwise however if the landlord enters into a new lease with the purchaser. To draw up a new lease the seller must surrender his lease and then it is no longer a "going concern" and attracts GST.

LEGAL COSTS

Whilst the benefits of consulting a lawyer are usually clear, next to taxes, nothing seems more irksome to some people, than lawyers' costs. The numerous jokes about lawyers are not a recent phenomenon. Again from Benjamin Franklin over 250 years ago, comes the following pearl.

The benefit of going to LAW.

Two Beggars travelling along,
One blind, the other lame
Picked up an Oyster on the Way
To which they both laid claim:
The Matter rose so high, that they
Resolved to go to Law
As often richer Fools have done
Who quarrel for a Straw
A Lawyer took it straight in hand
Who knew his Business was,
To mind nor one nor the others side
But make the best of the Cause;
As always in the Law's the Case:
So he his Judgment gave,
Lawyer like he thus resolved
What each of them should have;
Blind Plaintiff, lame defendant, share
The Friendly Laws impartial Case,
A shell for him, a shell for thee
The middle is the Lawyer's fee.



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TIMELY ADVICE is a good investment.

By all means try to resolve your family law dispute amicably but obtain legal advice as to your entitlements to ensure you do not agree on a distribution that is inequitable. Once property is sold and funds distributed it can be hard to redress the balance. Get advice before you provide excessive periodic support for spouse and children. That generosity is seldom compensated in a final property settlement. Conversely, press promptly for your child support entitlement as arrears are only paid from the date of your application. Agreements reached in Family Law matters need to be formalised and filed with the Court to ensure they can be enforced and to guarantee finality.

If there is any suggestion of difficulty with contact with children then negotiate or apply for court orders. The informal agreement is not enforceable and it can be very frustrating and expensive to find at the 11th hour that your ex spouse, contrary to promise, is not going to allow you to take the children for that holiday to Queensland after all.

"An ounce of prevention is worth a pound of cure," and guess who said that!!

Consider also how you wish your estate to be distributed on death but be wary of doing your will yourself. Litigation caused by ambiguous clauses, lapsed gifts and failure to provide for those to whom you have a moral obligation, will not be appreciated by your beneficiaries.

Don't hesitate to discuss costs with us. Much of our routine work has a standard fee. Other work is quoted on a hourly rate or on a case by case basis. Costs can be difficult to estimate due to uncertainties arising from the complexity of the matter, the position the other side will take and whether the matter can be negotiated or will require litigation. Our interest, however, is in forging a long term relationship of trust with you and so it is in our interest to find the most cost effective and practical solution for you.

LAWFUND

When we are in a position to reduce costs we do so. For conveyancing matters we have an arrangement with Lawfund. We can put you in touch with a law fund manager who has over 10 years banking experience and who negotiates with any one of 25 lenders for the most suitable deal for you. Overheads are kept low. Because we get a commission that translates into a reduction of conveyancing costs to you. We have been associated with this scheme for over 12 months and to date we have had only satisfied clients. Contact us if you would like a brochure.

ACCESS TO YOUR NEIGHBOUR'S LAND

One source of intractable disputes involve neighbours. At times you need to enter your neighbour's land to carry out maintenance or construction on your own land and your neighbour refuses to oblige or imposes impossible conditions or even a price. The *Access to Neighbouring Land Act* commenced in January 2001. The emphasis of the legislation is on consensual arrangements between neighbours wherever possible with recourse to the law to resolve access disputes as a last resort only. In determining costs the Court will examine the reasonableness of a party in refusing consent to access.

The procedure is that you make an application to the local court giving 21 days notice of your intention to do so. Before the Court may make an order it must first be satisfied that a reasonable effort has been made to reach agreement by the relevant parties as to the access and carrying out of the work and 21 days notice of the application has been given. These prerequisites ensure that only genuine disputes are brought before the Court and prevent frivolous actions. In granting access the Court can impose conditions. The scope of the work for which access can be granted is very wide and includes construction work, inspections, creating drains, removing trees or shrubs clearing or filling ditches.

The Court can order payment of compensation to the neighbouring owner for loss damage or injury arising from an access order.

FINANCIAL AGREEMENTS (before, during and after marriage).

New laws were introduced with much fanfare early in 2001. In practice their use has been substantially confined to agreements for those persons entering marital relationships second time around who are protecting pre-existing assets brought into the relationship. Stamp duty exemption and CGT rollover relief is not available in the same way as if you were relying on Family Court orders. Until that discrepancy is legislatively addressed these agreements will continue to have limited application. The Irish lived by Brehan laws from the 1st century BC to the beginning of the 17th century when they were discarded as barbarous. Perhaps some were in fact quite reasonable. Here is a topical excerpt. Judge for yourself!

"the husband-to-be shall pay a bride price of land, cattle horses gold or silver to the father of the bride. Husband and wife retain individual right to all the land flocks and household goods each bring to the marriage."

DISCLAIMER

This newsletter is for the benefit of clients. The information is of a general nature only. You should not act solely on the basis of material contained in this newsletter.