



newsletter

Looking After Our Clients For Over 100 Years

MAY 2014 Issue 18

People often fear the law and lawyers as they perceive that lawyers symbolise an abandonment of one's control. Commonly, people think that once lawyers become involved, problems will spiral out of control and they will drown in legalese and costs.

In fact the law provides many opportunities to ensure that you maintain control. A good lawyer will assist you to put in place strategies so that you can be confident that if something happens such as death, relationship breakdown, bankruptcy, or sickness, your affairs are best set up to avoid needless complexity and legal disputes.

Maryanne Ofner continues to expand the network of lawyers trained in Collaborative Practice as President of Collaborative Professionals NSW.

Edyta Zurawski became an Accredited Specialist in Family Law.

Warwick Dunn received a Life Membership from the NSW Law Society in recognition of his many years of practice and service to the profession.

Julie Koerner attended several seminars to keep her up to date in conveyancing, which was useful in the end of year boom.

Matthew Paull, rounded off his bookkeeping qualifications and achieved first place in his legal studies.

Eleanor Tolman successfully completed the first half of her Diploma of Legal Studies which she will complete in July 2014.

Ellen O'Brien continues to shine scholastically as she approaches the completion of her combined Arts/Law degree, obtaining valuable practical skills in her part-time employment with us.

Inter-family loans and gifts

Ever increasingly parents are helping their children purchase property in the competitive Sydney market, often by providing the deposit. However, when money is handed over informally between relatives, it can be difficult to ascertain whether the transaction was a gift or a loan. Distinguishing between the two is important so as to allow both parties to retain control over their finances.

Care should be taken to document monetary gifts or loans. Think about whether the recipient is able to service the loan, when you expect to be repaid and whether interest is payable. The written document acknowledging the loan should be signed by both you and the person (or people) to whom the money is loaned.

If you provide funds to a couple and the relationship breaks down, presumably you would like to be repaid at that point. Was it a gift or a loan? A formal loan agreement avoids ambiguity in any proceedings.

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thank you

Thank you to those who have sought our services, helped provide them, and to those who have referred others. We appreciate all your various forms of support.

...inter-family loans and gifts continued.

Consideration should also be given to whether your Will should be amended to forgive the loan on your death, or to bring the loan into account at that time.

Taking these precautions before giving large sums of money to relatives will help alleviate any problems that may arise in the future.

STRATA REFORMS

Recent reforms to strata laws in NSW have been devised to encourage greater participation in strata decision-making by residents and owners, with parties empowered to make their own decisions in a democratic and transparent way.

The reforms will enable parties to adapt a strata scheme to suit them. For example, where numerous members of the scheme live far away, virtual attendance at meetings (via Skype or conference calls) will be allowed and electronic access of documents will also be possible for that scheme. In other schemes, where the majority of members are investors, the scheme can elect for the tenants to have more opportunities to participate in the scheme. These reforms are not mandatory, but can be adopted by schemes if and when they suit them and their members.

Under the reforms, Strata Committee decisions will be more transparent and if problems arise, resolving the dispute may be easier for the members of the scheme, with internal dispute resolution processes within schemes now formally recognised.

BINDING FINANCIAL AGREEMENTS

A "pre-nup" might seem like something only Hollywood stars do but it may be an effective way of protecting yourself against an uncertain future and keeping control of your assets if any problems arise in the relationship.

Binding Financial Agreements ("BFAs") can be made prior to or during marriage, after separation, or after divorce. There is also a mirrored agreement for de facto couples which can be entered into before, during, or after the relationship. Such Agreements help protect both current and future assets, and can also be used to divide debt.

Importantly, however, BFAs can cause more harm than good if they are not drafted properly as they may be set aside by the Court, with money wasted on litigation. It is also important that you receive proper legal advice on the pros and cons of entering

into the Agreement before signing anything. To ensure its ongoing validity, the Agreement should not be an oppressive and unfair document.

COLLABORATIVE PRACTICE

When matters do get out of hand, issues surrounding relationship breakdowns may have to be resolved in Court. This can be lengthy and expensive for both parties, and can be avoided by lawyers skillfully negotiating on your behalf. Mediation is very helpful and Collaborative Practice is another available tool.

Unlike litigation, which takes place in Court, Collaborative Practice does not require the parties to relinquish control to the legal system. In fact, parties play the main role in the process, setting the agenda and the time frame, with support being offered by their team of professionals including lawyers and any other necessary experts such as child consultants, financial planners, or valuers. The result is not only a legally enforceable outcome but allows for more creative and tailored solutions.

With both parties supported to respectfully reach a resolution, the bitterness and acrimony associated with litigation may be avoided.



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We want to meet your needs and welcome any suggestions or feedback. Just send a quick email at any time to lawyers@biddsal.com.au

L to R: Eleanor Tolman, Warwick Dunn, Matthew Paull, Edyta Zurawski, Julie Koerner, Ellen O'Brien, and Maryanne Ofner.

SUPERANNUATION

Self-managed superannuation funds ("SMSF") are increasingly popular. One of the benefits of a SMSF is that you can be a trustee, running it for your own benefit. However, that role brings with it a large amount of work, some of which may require special skills and strict compliance with relevant regulations.

You need to keep on top of and organise records of investment to show why that particular investment was chosen and whether it was entered into properly. For instance, when buying property, conveyancing paperwork is useful in proving that the transaction was true and an arms-length transaction. This will help to protect you, as a trustee, from action should the investment fail.

If you are looking for more flexible control over your SMSF, then having a company as trustee may be the safer option. However, note that this will cost more per annum than the traditional

individual trustees structure (although it may work out to be cheaper in the long run).

It is also essential that each trustee is familiar with the trustee rules, such as keeping accounts, exercising reasonable care and acting gratuitously. These rules, however, can be altered by the terms of the trust deed. This is where the real power of control lies. For instance, a trustee cannot borrow or lease unless the trust deed says so.

To ensure that your fund's death benefits are paid out to the right people, a binding nomination is necessary. Such a nomination will require the trustee to act in accordance with your wishes, paying the superannuation death benefit to either your dependants or your estate (with the executor then paying out the proceeds according to your will). If you do create a nomination, it is important to update it when required by law or if you divorce, re-marry or have children.

FAMILY LAW

Relationship breakdowns are one of life's greatest stresses both financially and emotionally. However, there are a number of ways to keep the process in check. This may involve prior planning before entering a serious relationship, or adopting an alternative dispute resolution method during the separation process.

LORD HOWE ISLAND

Warwick recently spent the Christmas break on Lord Howe Island as he has done for many decades. In recent years, the NSW Government appointed the former High Court Chief Justice Murray Gleeson to review the administration of the Island. A review of land issues has now been instigated. This could result in



considerable change to the present leasehold regime including possible conversion of leasehold to Torrens Title.



The Island's unique constitution continues to provide unusual and interesting legal challenges.

REGIONAL RELOCATION GRANT

If you have been living in the metropolitan area for the past 12 months but are now looking to purchase and live in a regional property, you may be eligible for a regional relocation grant of \$7,000 to assist you with relocation. To be eligible, you must be:

- An Australian citizen or permanent resident;
- purchasing regional property worth no more than \$650,000 (or \$450,000 for vacant land);
- living in the regional property within 12 months of purchase;
- living in a metropolitan area for at least 12 months prior to purchase;
- selling the metropolitan home in the 12 months prior or will sell 12 months after purchase of the regional property (if applicable)

To find out more, please visit:
<http://www.osr.nsw.gov.au/grants/rrg>

ENDURING POWERS OF ATTORNEY

One of the fears of age is the loss of autonomy and the power to look after your own affairs and make your own decisions. An Enduring Power of Attorney appoints a person or persons whom you trust to act on your behalf when you are absent or unable to carry out your affairs through incapacity. It is always a good idea to appoint an Attorney before travelling overseas as this will alleviate any difficulties that may arise in your absence. Powers of Attorney only apply to financial matters. Health care and lifestyle decisions are covered by the Appointment of Enduring Guardian or Guardians.

On 1 May 2013 the NSW Parliament passed legislative amendments which may have some impact on your appointment of an Attorney. The most important changes are:

- One or more substitute attorneys can now be appointed;
- Where two or more people are appointed joint attorneys, the principal can specify in whether or not the appointment will be terminated upon one Attorney vacating their position;
- Disputes will be referred to the Guardianship Tribunal rather than the Supreme Court (which will take up less time and money for those involved);
- Attorney responsibilities are clearly set out in the form

The updated form will be mandatory from 1 March 2014. The old form of Power of Attorney will continue to be recognized if signed before 1 March 2014.

Another worry about loss of control is that, after death, all your good work will be unravelled or that your legacies will not be upheld. A proper and correctly drafted Will is important in ensuring your wishes are carried out and your Estate administered with ease.

Property Law & Conveyancing

Family Law & Domestic Relationships

General Law & Litigation

Wills & Administration of Estates

Commercial Services

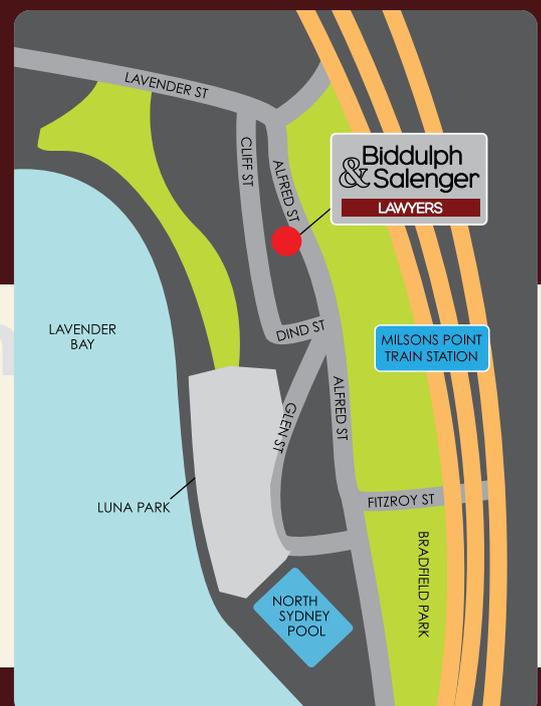
Powers of Attorney & Guardianship

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DOCUMENT REVIEW. We are carrying out a systematic audit of our documents held in safe custody, appreciating the importance of these documents. Some of you may receive a letter reminding you to update your Will and prepare a Power of Attorney. If you do not have a deed packet with us, consider whether you have a Will and Power in place. If not, please consider making these documents so as to avoid complications if you are incapacitated or die.

4 Don't hesitate to call with a query. If we can't answer it or solve your problem we can refer you to someone who can.