



Biddulph & Salenger Lawyers

Client Newsletter

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Issue 14 November 2009

After 37 years of occupancy by Biddulph & Salenger, the gracious heritage building at 28 Alfred Street has passed into new ownership and we have now relocated to fresh, modern premises in the 'Harbourlights' building at Suite 7/102 Alfred Street Milsons Point. All other contact details remain unchanged.

Come visit us at our new premises, where you will find the same reliable service and friendly faces. Accredited family law specialist Maryanne Ofner and associate Edyta Zurawski continue to provide personalised, efficient service for our many loyal family law clients as does Amanda Blackman in the areas of property and commercial law. Warwick Dunn continues to provide experienced and wise counsel and advice to clients.

In this newsletter we provide an update on our Family and Property Law practice. We also wish to bring your attention to a major revision of the law affecting Wills and reiterate the importance of regularly reviewing and updating your Will as the law and your personal circumstances change.

CHANGES IN THE LAW

Wills and Estates

There have been some significant changes to the laws of succession that may have implications for you and your family.

Key changes to succession law: What happens to your estate if you die without a Will? Under the new *Succession Act*, when an individual dies intestate (ie without leaving a valid Will), leaving a surviving spouse and children, if all the surviving children are also the children of the surviving spouse, the whole of the deceased's estate will pass to the surviving spouse. If the children are not the children of the surviving spouse, then the spouse is entitled to the deceased's personal effects and household items, a statutory legacy (currently \$350,000) and one half of the remainder of the estate. The surviving children will be entitled to one half of the remainder of the estate.

While some of the new developments attempt to ensure that appropriate provision is made for everyone, these assumptions in the law may not reflect the intentions of individuals and underscore the importance

of having a valid Will in place. Some of these important changes state that:

- Cousins of the intestate are now included as statutory relatives under the new *Succession Act*; and
- The State of New South Wales is now entitled to the whole of the estate where the intestate leaves no living statutory relatives who are entitled to the estate. The State has a discretion to waive its rights in favour of a wider range of claimants which now include an organisation for whom the intestate might reasonably be expected to have made provision.

Please contact any of our solicitors to have your Will updated.

How do I challenge a Will? From 1 March 2009, the *Family Provision Act* ceased to apply in relation to estates of persons who die on or after 1 March 2009. However, the 1982 Act still applies to the estates of those who died before that date. This means there are now two different sets of rules which could apply to those wishing to contest Wills in NSW, depending on when the deceased died.

Some of the key changes you should be aware of include:

- The time limit for making a Court application for provision has been reduced from 18 months to 12 months from date of death.
- People living in "close personal relationships" with the deceased at the time of death can now come under a new category of "eligible person".
- Unless the Court agrees that there are "special reasons", all family provision applications must now be referred for mediation before any hearing takes place.

OTHER CHANGES TO THE LAW OF WILLS:

The Supreme Court can make a Will for a person lacking testamentary capacity - for instance, a person may have made a valid Will and then have lost capacity without having had the opportunity to amend the Will to include the subsequent birth of a child. An application for a court-authorized Will can be made rather than the relatives being subject to the rules relating to intestacy.

Pets and your Will

There are a number of ways that you can ensure the welfare of your pets upon your death including making provision in your Will. As animals do not have any legal status, this must be done carefully so that the gifts do not fail.

For further information, see the brochure "What About Me? Your Pets and Your Will" at (<http://www.lawsociety.com.au/idc/groups/public/documents/internetyounglawyers/023693.pdf>) For further information about legal issues affecting your pets, please contact Edyta Zurawski.



Developments in Family Law

From 1 March 2009, de facto couples can make financial agreements under the *Family Law Act*. The provisions of the *Family Law Act* that deal with agreements between de facto partners (including same sex relationships) generally mirror the provisions of the Act that regulate agreements between married couples. Following divorce you ought to make a new Will. Divorce does not automatically revoke a Will but any gift willed to the ex spouse is revoked. Marriage has the effect of revoking any Will made before marriage unless specifically made in anticipation of marriage.

Following a relationship breakdown you may want to achieve positive relationships with your children, civil lines of communication with your former spouse and a secure financial future. It is important to identify the right process to achieve these outcomes. There are a range of paths to follow from informal discussions, solicitor negotiated settlements, mediation, collaborative practice or litigation. Contact Maryanne Ofner, accredited family law specialist and collaborative lawyer to discuss the process that will best suit your needs and particular situation. Maryanne is committed to helping separated couples and families reach workable and creative settlements in a cost effective way.

Property Law

Although the first home owners boost concessions have expired there are still opportunities for stamp duty reduction. See http://www.legalink.com.au/NEWS/NEWS_25_08_2009_01_FHRefSheet.pdf for further details.

Please contact Amanda Blackman for advice in relation to your sale or purchase.

Witnessing of Documents and establishing identity for overseas Jurisdictions – the role of the Notary Public

Any of our solicitors has the authority to witness your signature on documents. However, some overseas jurisdictions require the signature of a Notary Public (a solicitor with further training and international recognition through the Department of Foreign Affairs and Trade) such as Amanda Blackman.

Once again, we thank you for your continued support and referrals over the past year and look forward to assisting you next year and into the future.



NEED HELP WITH A LEGAL PROBLEM?

Do call us if you have a query. There is no charge for quick phone advice and if we can't help we may be able to identify someone who can.

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.