



Biddulph & Salenger Lawyers

Newsletter

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www.biddsal.com.au

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At the beginning of 2011 our hearts go out to all the thousands of Australians besieged by natural disasters. At such times, some of us might ask "What if that happened to me? Could I start afresh? Do I have adequate insurance in place? Are duplicates of important documents elsewhere? Does my solicitor have my title deed, Will and Power of Attorney? What if something happened to my solicitor's office?"

At Biddulph & Salenger your documents are secure in a fire proof safe. Many documents and all files are also stored on our electronic data base. A duplicate copy of the data base is maintained securely off site as well.

Our firm has a 105 year history of providing property and estate services. Critical to those services is the proper maintenance of documents.

Good communication within the Biddulph & Salenger team ensures that we all take an interest in and responsibility for your matters. Personnel changes, when they occur, do not cause any disruption to the security of your documents nor to the conduct of your matter.

At the end of 2010, after 5 years as a partner, Amanda Blackman left the firm. **Property matters are now handled by our three solicitors assisted by competent support staff.**

Maryanne Ofner, a general practitioner, accredited family law specialist and collaborative lawyer, continues as principal of the firm in which she has been involved since 1986.

Edyta Zurawski, associate solicitor who commenced her involvement in 2002 with the firm, is a skilful and committed advocate in all litigation matters, assists Maryanne with family law and is competent in conveyancing and general areas of practice. She is also dedicated to many aspects of the evolving area of animal law.

Warwick Dunn, senior lawyer and a former long term partner of Biddulph & Salenger with a lifelong involvement in property, estate and general matters, maintains his energetic routine at the office and visits clients as circumstances require.

Julie Koerner continues her long experience as a conveyancing paralegal, with the full support of the solicitors in our office.

Matthew Paull as office manager and accounts clerk steps in as a support person in any area required. He is always approachable and considerate of client's needs.

Everyone at Biddulph & Salenger undertakes regular training to keep up to date with new developments in the law as well as technology.

If we can't help you, we always find reliable people who can!

THANK YOU

Thank you to those of you who have sought our services in 2010, to those who have helped us provide them, to those who have referred others to us and to those who have sent us Christmas and New Year greetings. We appreciate all your various forms of support.

JUST A REMINDER

Approximately 18 months ago, we **MOVED** from our terrace house to fresh, modern premises, in the same street at "Harbourlights" Suite 7, 102 Alfred Street, Milsons Point. We retain the same phone, fax and email. We are close to the train station and street parking is available.

Our separate entrance is at the northern end of the building.



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FUTURE PLANNING

The month of January, named after the Roman God of time of change and transition, was worshipped at the beginning of harvests and planting times as well as at marriages, deaths and other beginnings. According to the Roman wisdom of Gaius Caesar *"It is a general human weakness to allow things uncertain and unknown to set us up in hope or plunge us into fear"*.

Pursuing, therefore, the theme of "What If?" in this newsletter we will consider some elements of future planning that should be fundamental in your risk management strategies.

What if I want to buy or sell my property? What if I get ill? What if my relationship breaks down? What if I want to down size? What if I make gifts to my children? What if I die?

With that in mind, we don't wish to catastrophise but rather to caution prudence for *"Do not forget a man needs little to lead a happy life"* (Marcus Aurelius) and *"Everywhere chance reigns. Just cast out your line and where you least expect it there waits a fish in the swirling waters"* (Ovid). So *"be favourable to bold beginnings"* (Virgil) and have a wonderful year!



What if I want to buy or sell property?

Buying and selling property can be a highly stressful time and important consideration needs to be given to the process and implications of entering into a contract for the purchase or sale of property. We are able to assist you with all aspects of conveyancing and property law whether you are buying, selling or leasing property as a home, an investment or a business.

At the time of purchase, you should consider the legal aspects of purchasing the property. For example, are there any GST implications and if so, what is the extent of the liability? What is the state of the property and what warranties do you have about the condition of the property? What happens if the property is damaged before settlement occurs? What happens if you find something out after applying for statutory enquiries that makes you change your mind? Will you get your deposit back if you pull out of the contract?

Even trickier legal issues can potentially arise with the purchase of "off the plan", company and community title properties.

There are also serious questions that need to be considered at the time of selling property including whether any renovations have been carried out and whether they comply with legislative requirements and if not, what are the consequences. Do you have a swimming pool and are there smoke alarms in the property? People and companies selling investment properties also need to consider any obligation to pay land tax and capital gains tax and the extent of such liabilities.

IMPORTANT

You should always have your solicitor check any contract for the sale or purchase of property and provide you with advice before exchanging or entering into the contract (including contracts with a cooling off period.)

What if the property I am buying is damaged before settlement?

The *NSW Conveyancing Act* provides that risk relating to residential property does not pass until the completion of a sale or at an earlier time as agreed between parties, for example, if a purchaser takes possession of the property prior to settlement. However, this remains a complicated area of law. Many mortgagees have a requirement that you take out householder's insurance (to a certain value) before they will provide loan approval. We recommend that insurance is taken out as a matter of priority following exchange of contracts as there is no guarantee that a vendor holds insurance or adequate insurance in the event of fire, flood or other damage to the property before settlement.

What if I want to rent my property or have problems with my tenants?

Tenancy legislation has recently undergone extensive reform and the *Residential Tenancies Act 2010 (NSW)* came into force from 31st January 2011. The new legislation is aimed at providing more dispute resolution mechanisms and to more fairly balance the rights of tenants and landlords.

If you own an investment property which is rented or are considering renting your home, important new provisions that you need to be aware of include:

- Where the fixed term has expired and you want a tenant to leave "without grounds", 90 days notice must be provided. If you provide notice just before the end of the lease you must provide 30 days notice.
- Termination of the lease will be cancelled where a tenant catches up on rent unless the tenant frequently fails to pay.
- Bonds will be limited to four weeks rent but can be topped up.
- Where tenants are required to pay for water usage, landlords must ensure that the property is

water efficient.

- Landlords will need to provide proper disclosure to tenants including providing disclosure as to whether the property is being sold or if a mortgagee has commenced action to foreclose on the property.
- Landlords can apply for a lease to be ended if a tenant uses the premises for illegal purposes, or threatens, abuses or intimidates the agent or landlord.
- Where a landlord is selling the property, 14 days notice before the first inspection must be given to the tenant. Inspections are limited to two periods per week although the tenant can allow more where necessary.
- Landlords will now need to approve any sub-letting of the property or if tenants want to bring in a co-tenant. Landlords, however, must be reasonable when approached with such request but can refuse where the prospective tenant is blacklisted or the property will be overcrowded.

What if I become ill or incapacitated?

Illness and incapacitation is a highly stressful time for individuals, their family and their friends. A number of financial and medical burdens, however, can be alleviated by ensuring that your affairs are in order. A Power of Attorney, by which you can appoint an Attorney to handle your financial and property affairs, is a relatively simple document that can assist in times of illness or incapacity. Additionally, an Appointment of Enduring Guardian allows you to nominate trusted persons to make significant medical and end of life decisions as well as practical decisions regarding your accommodation and day to day support and services.

In the absence of these documents, an application can be made to the NSW Guardianship Tribunal for the appointment of Financial Managers and Guardians. This can be an emotional and taxing experience. Maryanne, who presided on the Tribunal for 12 years, can reduce your strain by assisting and advising you.

What if my relationship breaks down?

The breakdown of a de facto relationship or marriage can bring about financial and emotional turmoil. Questions arise. Who gets what? What are the assets worth? How much time should the children spend with each parent? In recent years, a common way of limiting conflict and disagreement at the end of a relationship has been through Binding Financial Agreements.

Under amendments to the *Family Law Act*, these Agreements can now be made at any time, by couples who are contemplating entering into a de facto relationship or marriage, or who are in such a relationship or who have recently separated. These need to be comprehensive and drawn up with independent legal advice.

In the event that your relationship has already broken down, Maryanne and Edyta can assist you to finalise

your property and parenting matters. We settle matters quickly and amicably where we can by negotiation. We pursue your matters vigorously and fearlessly if litigation is required.

Relationship breakdowns should trigger a reconsideration of your Will, superannuation and any binding superannuation nominations that you have made.

What if I want to make gifts or loans to my children?

You or your company may be considering making a loan or a gift to your child. Have you considered the implications including taxation and enforceability of loans? The duties on company directors and impact of company loans to relatives can be complicated. You should speak with one of our solicitors to see what arrangements should be in place before making loans or gifts. We are able to draft documents such as loan agreements, family trust documents and testamentary trusts for gifts following death.

What if I want to retire or downsize?

A number of considerations arise when thinking about retirement and down-sizing. What is the impact of capital gains tax on your investments? Is your superannuation in order? Does property need to be sold? Do you want to move in with your children? What is your eligibility for the pension? How will your decisions impact on your entitlement to the pension?

We can assist you with the legal issues arising such as the sale of businesses and properties, establishment of trusts and superannuation funds, winding up of companies and agreements between family members if you wish to move in with a relative. We work with your other trusted professionals who look after you, such as accountants and financial planners.

What if I die?

Do you have a current and valid Will in place? A simple Will will avoid many complications in the event of death. Should you die without a valid Will, your estate is deemed "intestate" and is distributed in accordance with the rules of intestacy.

Recent changes to the legislation now provide that if you have not left a Will, your surviving spouse (including de facto spouses) will receive the whole estate where there are no children.

If there are children, then the estate will be divided between your spouse and children. In the absence of spouses and children, your estate will go to your parents and then a hierarchy of other relatives and in the absence of any eligible relatives, to the government. Poorly drafted or controversial Wills may also lead to litigation following your death

To avoid complications and to ensure that your estate is distributed in accordance with your wishes, it is essential that you have a Will in place that accurately reflects your personal circumstances. We have many years of experience in drafting both simple and complicated wills and in acting on behalf of executors in administering estates as well as handling disputed and litigated

estates. We are also able to advise you on how to include your nominated charities and your pets in Wills.

What if my executor needs details of my assets?

Please contact us if you would like a **complimentary copy** of an **Estate Checklist** which can assist both you and your executor in tidying up your affairs. This document can be stored at home or with your Will.

You should also ensure your Will, title deeds and other important documents are located in a secure location. We are able to provide that service to you free of charge. Please contact us if you would like us to retain your deeds and Wills.

What if I don't want to litigate?

Current legal trends encourage individuals to resolve their legal problems without resorting to traditional litigation. Collaborative law is one way in which litigation can be avoided and involves a written commitment by the lawyers and their clients to work together in good faith to negotiate a settlement. Parties:

- Are each represented by lawyers trained in collaborative negotiation
- Agree to exchange information in a co-operative manner
- Negotiate in "four-way meetings" in which both parties and their lawyers participate
- Hire experts where needed
- Promise to negotiate in good faith.

Collaborative law has proved to be successful in achieving settlement in the majority of cases where it has been used. It can be used in areas such as family law, disputed estates, building and property disputes, negligence and business law. **Maryanne is a trained collaborative lawyer.**

What if I buy faulty goods?

Australian consumer law has undergone an enormous overhaul with the introduction of the *Australian Consumer Law* which came into force on 1st January 2011. The Law replaces numerous State laws and provides one national scheme and provides greater protections for consumers.

A consumer is defined as someone who purchases goods that are less than \$40,000 in value. A national consumer guarantee provides that goods must be of an acceptable quality, fit for their purpose and must match the description, sample or model. Repairs and spare parts must be reasonably available to consumers. Receipts must be given for goods purchased over \$75 and layby termination fees must be reasonable.

For further information visit

<http://www.consumerlaw.gov.au/content/Content.aspx?doc=home.html>

What if my pet causes a legal problem?

With Australia having one of the highest rates of pet ownership in the world, there is quite a lot of legislation surrounding the regulation and management of pets. Your neighbour may complain about your barking dog or your nuisance cat. You may consider your vet or boarding kennel negligent. You or your pet may have been injured by another animal or your dog may have caused injury to another animal. What if you want to move your pet into your unit? How can you include your pet in your Will?

Edyta Zurawski assisted with the authoring and editing of the New South Wales Young Lawyers "Animal Law Guide", a community resource which has now been distributed to New South Wales libraries as well as various legal centres, vet clinics and community based organizations. You can download your copy at <http://www.lawsociety.com.au/about/YoungLawyers/Committees/AnimalLaw/Resources/index.htm>

Edyta is happy to help you with any of these problems.

GENERAL INFORMATION

Website

We will have a new website in place shortly. Apart from a fresh updated look and ease of navigation, we will have a blog so that we can regularly bring you up to date with new developments or items of interest.

