Australia's Biggest Morning Tea

Solari & Stock supported Cancer Council's Australia's Biggest Morning Tea in May and held a morning tea in the office to show our support for everyone affected by cancer.

For over 20 years, Australia's Biggest Morning Tea has helped fund world class research, prevention programs and support services for cancer patients and their families.

We had a target of $500 and we are proud to report that we raised $560 for a worthy cause!

Mini tarts made by one of our very own budding pastry chefs!

Michael Solari and Riccarda Stock enjoying the morning tea delicacies.

Cancer Council | Australia's Biggest Morning Tea

Online Payments

We are pleased to have launched the 'Online Payments' page of our website.
You can now pay your invoice with ease using the secure simple form and your credit card details.
Visit **www.solariandstock.com.au/online-payments**

Please note: we do not store any personal information or credit card details on our site.

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SOLARI & STOCK
LAWYERS

NEWSLETTER • AUGUST 2015

Purchasing a Property? Be Well-Informed!

FREE CONVEYANCING & PROPERTY LAW SEMINAR

Join Johnathan Neofytou, Senior Associate at Solari & Stock Lawyers, for our free seminar as he identifies and explains:

- 10 critical issues you need to know when purchasing a property.
- The potential pitfalls that can arise in a purchase.
- How to avoid the drastic consequences that can arise if things go wrong.

DATE	Wednesday, 26 August 2015
TIME	6.30pm
WHERE	Level 2, 12 Central Road, Miranda NSW
	Drinks & nibbles will be provided
RSVP	9540 4111 or courtney@solariandstock.com.au

Financial Planning & the Aged Care System

Seats are limited so make sure you RSVP early!

FREE SEMINAR PRESENTED BY ZENITH FINANCIAL PLANNING

Solari & Stock Lawyers, in conjunction with Zenith Financial Planning, invites you to join us for a free Aged Care seminar outlining:

- Understanding the Aged Care system
- The cost of residential Aged Care
- Centrelink and the Aged Care system

Presenter Simon Boylan, Certified Financial Planner since 1993 and Principal of Zenith Financial Planning, has been providing retirement advice to people since 2001 and has specialised in Aged Care financial advice for over eight years.

DATE	Tuesday, 1 September 2015
TIME	6.30pm
WHERE	Level 2, 12 Central Road, Miranda NSW
	Drinks & nibbles will be provided
RSVP	9540 4111 or courtney@solariandstock.com.au

Need Help After a Family Breakup?

FREE FAMILY LAW INFORMATION SESSION

Riccarda Stock, a Law Society Accredited Specialist in Family Law, will share her 24 years' experience and knowledge covering areas such as dividing assets, including superannuation and self-managed super funds, protection from debt, children's arrangements, legal costs and how to minimise these and much more.

IN ADDITION – you will receive a **COMPLIMENTARY VOUCHER FOR ½ HOUR FREE CONSULTATION** with one of our Family Law lawyers, completely obligation free.

DATE	Wednesday, 2 September 2015
TIME	6.30pm
WHERE	Level 2, 12 Central Road, Miranda NSW
	Drinks & nibbles will be provided
RSVP	9540 4111 or courtney@solariandstock.com.au

Our team of experienced lawyers can provide you with expert legal advice for all your legal needs including:

- Property Law & Conveyancing
- Leases
- Mortgages
- Sale & Purchase of Businesses
- Business & Commercial Law
- Employment Law
- Franchising
- Building Contracts & Disputes
- Environmental & Local Government Law
- Family Law & De Facto Law
- Litigation – all Courts
- Debt Recovery
- Wills, Estate Planning & Powers of Attorney
- Deceased Estates & Disputes
- Criminal Law
- Defamation
- Registered Clubs & Liquor Licensing

Ensuring your binding death nominations in your super are valid.

Michael Solari

A recent Supreme Court case in Queensland is a timely reminder of the need to take care when nominating who is to receive a member's superannuation benefits, particularly when the provision is made in the binding death nomination for payments to be made to a member's estate. As a preliminary point, a death benefit nomination is a notice given by a super fund member to the trustee of the fund, setting out who is to receive the member's superannuation benefits on their death. The member can chose if their nomination is binding or non-binding, or it might also depend on the rules of the particular super fund.

If a death benefit nomination is binding and complies with the law and the rules of the super fund, then the trustee is bound by it and must distribute the member's superannuation benefits in accordance with its terms.

If there is no binding death benefit nomination, then the trustee generally has discretion to decide how to distribute the benefits in a way allowed under the law and the super fund's rules.

Whether or not a binding death benefit nomination is necessary and as to whether it should merely allow a super fund benefit to be paid out under the Will, is a matter that needs to be the subject of careful consideration bearing in mind each person's individual circumstances.

In the Queensland Supreme Court case, the deceased person signed a binding death nomination and specified the beneficiary to receive the superannuation benefit as 'trustee of deceased estate'. An argument ensued as to whether this was sufficient to compel the super fund trustee to transfer the super fund benefit to the deceased person's estate. The specific Trust Deed for the super fund provided that the trustee was required to pay any benefits in accordance with a binding nomination provided the nomination, amongst other things, specified the benefits which were to be paid to one or more of the member's dependents or the member's 'legal personal representative'.

The issue in the case was whether the description of the person to whom the benefits were to be paid, namely the trustee of the deceased estate, was sufficient bearing in mind the rules of the fund requiring the nomination, in these circumstances, to the 'legal personal representative'. Although the Court acknowledged that in the context of a deceased estate 'executor' and 'trustee' are used inter-changeably, the terms are distinct. In the circumstances, the Court found that the description of the person, being the description in the binding death nomination of 'trustee of the deceased estate' did not comply with the fund's rules as being the same as 'legal personal representative' under the fund's rules. Therefore, the binding death nomination was not valid.

One other issue that arose in the case was the question of whether a binding death nomination in a self-managed super fund lapses automatically after three years, as is a requirement under Superannuation Law concerning super funds other than self-managed super funds. The Court expressed the view that the particular regulation did not apply to self-managed super funds. However, as this was not an important part of the case, it is not a definitive expression of the law.

Therefore, at this stage, self-managed super fund members should continue to ensure that their binding death nominations are renewed every three years.

This case highlights the importance of there being careful consideration of the super fund's rules and their requirements when making binding death nominations, and the care that needs to be taken in completing binding death nominations.

For further information, please contact Michael Solari, head of our Commercial and Wills & Estates Teams.

How much deposit do you need when exchanging contracts with a cooling off period?

Upon exchange, the deposit to be provided is the amount noted within the contract. The standard contract provides for a 10% deposit to be provided on exchange.

Under the Conveyancing Act and the cooling off provisions of the Act, it does not state the amount of deposit to be provided by the purchaser on exchange, it only states that a deposit is to be provided when contracts are exchanged with a cooling off period and should a purchaser exercise their cooling off rights, they are to forfeit only 0.25% of the purchase price.

Often a special condition is inserted in the contract allowing a 0.25% deposit to be provided on exchange when a contract is exchanged pursuant to a cooling off period and the balance of the deposit paid by the expiry of the cooling off period.

A purchaser should always have their solicitor check this prior to exchanging a contract, even if it is pursuant to a cooling off period.

Within our standard special conditions, we have a special condition which covers this exact situation.

Without such special condition, you will need to obtain the full 10% deposit from the purchaser on exchange.

This also leads into a discussion on the acceptance of a deposit of less than 10%. The Courts have ruled that a reduced deposit clause within a contract seeking to top up the deposit to 10% (other than in the cooling off scenario above) can amount to a penalty upon the purchaser if the purchaser defaults and therefore this type of clause may not be enforceable.

To assist in making this type of clause as enforceable as possible for our vendor clients, the full 10% deposit should be shown on the front page, with a clause then inserted into the contract evidencing the 'top up' of the deposit in certain circumstances.

With this being the case, we advise our clients that although we put this type of clause into the contract, they may not be able to recover the full 10% deposit if the purchaser cannot complete and they have accepted a lesser deposit on unconditional exchange or upon expiration of the cooling off period.

Are you buying or selling a property and have more questions? Come along to our free Conveyancing Seminar on Wednesday, 26 August at 6.30pm (see page 1 for more details). Alternatively, contact Johnathan Neofytou, Manager of our Conveyancing Team.

Have you separated but never formalised a property settlement?

Many couples who separate today come to a mutual agreement on how to divide their property, however many do not take the steps to legally formalise these agreements. Unfortunately things can change over time, amicable couples can become uncivil and an individual's financial situation can significantly change for better or worse.

In Australia, the Family Law system is set up to provide time frames for couples to apply to the Courts for formal property orders. For married couples, Section 44(3) of the Family Law Act 1975 provides that parties have 12 months from the date of divorce to bring an application for property orders to the Courts. For de facto couples, Section 44(5) of the Family Law Act 1975 requires the filing of any application within 24 months of the date of separation.

However, the lapsing of these time frames does not automatically protect a person from a future application for property orders by an ex-partner. A party can seek and obtain leave from the Court to file an application for property orders outside the above time frames. Section 44(4) of the Family Law Act 1975 establishes that the Court can grant leave if the Court is satisfied that hardship would be caused to the party if leave was not granted.

This is an area of law, both locally and internationally, that has gained attention recently due to some high profile cases.

Earlier this year, there was a very high profile case where the United Kingdom Supreme Court granted leave for an ex-wife to have her application for property orders heard by the Family Court more than 18 years after her divorce. In this case, Wyatt v Vince [2015], Ms Wyatt and Mr Vince were married in 1981, separated in 1984 and there was one child of the marriage. The couple divorced in 1992. Ms Wyatt raised the child of the marriage, along with three children she had from other relationships. Ms Wyatt had remained in a very modest financial situation and has been reliant on Government pensions and support from her family. On the other hand, Mr Vince had become a multimillionaire from a green energy company he started in the 1990s, after their divorce.

The Supreme Court allowed Ms Wyatt the opportunity to have her application to the Court for a lump sum and for interim periodical payments heard, although there was no guarantee she would be successful. In fact, the Supreme Court's judgment highlighted that her application will face 'formidable difficulties'.

The case of Wyatt v Vince may have established a precedent in the United Kingdom that creates an avenue for cases where one party is significantly in a worse financial position then the other. The wealthier party may find it cheaper and more efficient to settle rather than run the matter to hearing. Thus the financially worse off party may receive a financial gain from pursuing an application that may have 'formidable difficulties'.

In Australia in the 2012 case of Ordway & Ordway [2012], an ex-wife successfully sought leave from the Court to proceed with her application for property proceedings 26 years after her divorce was decreed. The Judge in this matter established that the ex-wife would have been in hardship if the leave was not granted. In this case, the parties had an informal financial agreement and this was a factor that was considered and relied on by the Judge when making his decision to grant the leave.

Last year, the Family Court of Australia made a decision in the case of Montano & Kinross (2014) to grant leave to a de facto ex-wife after she failed to lodge an application for proceedings within 24 months of separation. The de facto wife in fact lodged her application 47 months after the date of separation. The significance of this case is that the Full Court established that the appropriate way to consider applications for leave is by considering all of the relevant factors in a global approach.

What these cases do is highlight the importance of parties legally formalising their property settlement to protect themselves in the future. It is clear from these cases that a lapse of legislative time frames is not enough to protect a person's financial interests.

The only guaranteed way of ceasing the financial relationship with an ex-partner and protecting oneself from future claims, is by having property orders completed. This can be done by Consent, where both parties agree, or through a Court judgment. The reality is no one knows what their future holds and it is always possible that someone might start a multimillion dollar business, win the lottery, or received an inheritance. This could be enough for an ex-partner to want to commence proceedings so they can try to change their own financial position.

We take this opportunity to introduce you to our Family Law Team, headed by Director and Accredited Specialist,Riccarda Stock and backed by a team of four dedicated solicitors. The Family Law Team at Solari & Stock can provide you with a wealth of knowledge across all areas of Family Law. For the Team's extended bios, visit **www.solariandstock.com.au**

Riccarda Stock
Director,
Accredited Specialist in Family Law,
Family Law Collaborative Lawyer

Fiona Kirkman
Senior Associate,
Accredited Specialist in Family Law,
Nationally Accredited Mediator,
Family Dispute Resolution Practitioner

Angela Cooney
Solicitor

Fiona Gill
Solicitor

Tristan Harley
Solicitor