Joint Tenants v Tenants in Common

When purchasers enter into a contract to purchase a property and there are two or more of them (including two or more companies), they need to decide how the property is to be held.

They have two options. These are to purchase as Joint Tenants or Tenants in Common. This is needed to be specified on the front page of the contract.

If a property is owned as Joint Tenants it means that:

- For all intents and purposes (although not strictly from a legal perspective) it is owned in equal shares; and
- If one of the owners dies, then their share automatically passes to the surviving owners (even if they have a Will that gives their estate to someone else – the Will cannot override a joint tenancy)

  This type of ownership is most popular with people in first marriages or their first long-term de facto relationships. It is appropriate where it is the wish of the joint owners that if one of them dies, that their share in the property goes to the other joint owner.

If a property is owned as Tenants in Common it means that:

- The purchasers can choose to own the property in equal shares, or unequally. For instance, if one has contributed more to the property than the other, the shares could be held as, 1/3 and 2/3 or where a person, for asset protection purposes, wishes to only have a small interest (say 1/100) in the property; and
- If one of the owners dies, each owner is able to stipulate in their Will who gets the ownership of their share (it will not automatically go to the other co-owners as it would if held as joint tenants)

This way of owning a property is popular with owners who want different shares of ownership or don't want their share to necessarily go to the other owners. For instance, if you they are buying into a property with a group of friends, or with a business partner, etc.

If the purchasers are in a second marriage or have children from a previous relationship then Joint Tenants is possibly not the best option for them.

If you are involved in the exchange of contracts, you should seek legal (and possibly accounting) advice as to how the property is to be held, prior to the exchange occurring. If you get this wrong at the time of exchange, it may result in additional expenses being incurred to correct this. There are also significant different legal consequences which flow from the different forms of joint ownership.

Reminder!
Swimming Pool Compliance Certificates required from 29 April 2015

The requirement for all properties with a pool being sold and leased (including those in strata complexes with a pool) to have a valid Swimming Pool Compliance Certificate is fast approaching. As outlined in our November 2014 newsletter (which you can find on our website), for a contract or lease to be enforceable (on or after 29 April 2015) against the purchaser or tenant, you must have a Swimming Pool Compliance Certificate which has been issued within the last three years.

Penalties for having a non-compliant pool can be up to an amount of $5,500, with on the spot fines of $550 also able to be issued.

For further information about your swimming pool compliance, contact Johnathan Neofytou or Michael Marney of our Conveyancing Team.

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NEWSLETTER • FEBRUARY 2015

Ensure your Legal Affairs are in Order.

FREE WILLS, POWERS OF ATTORNEY & GUARDIANSHIPS SEMINAR

Michael Solari, with over 34 years' experience as a solicitor, is presenting a free seminar on Wills, Powers of Attorney and Guardianships. He will address 10 key issues you need to consider in organising your financial affairs, ensuring your assets go to your chosen beneficiaries and addressing issues within your family. You will learn how to take unnecessary stress away from those closest to you.

DATE	Wednesday, 11 March 2015
TIME	6.30pm
WHERE	Level 2, 12 Central Road, Miranda NSW
	Drinks & supper will be provided
RSVP	9540 4111 or admin@solariandstock.com.au

Seats are limited so make sure you RSVP early!

Need Help After a Family Breakup?

FREE FAMILY LAW INFORMATION SESSION

Riccarda Stock, a Law Society Accredited Specialist in Family Law, will share her 20 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, 20 May 2015
TIME	6.30pm
WHERE	Level 2, 12 Central Road, Miranda NSW
	Drinks & nibbles will be provided
RSVP	9540 4111 or admin@solariandstock.com.au

How poor Estate Planning can increase the risk of a challenge to your Will

It is common for people who control valuable business or tax structures and entities outside of their estate to make provision for their family through those entities when they die, as opposed to leaving gifts to them in their Will.

A recent Queensland case highlighted where, unfortunately, this was not successful. The deceased was survived by his second wife and seven children from three different relationships. His estate was worth approximately $28million. He did not make any provision for a number of his children in the Will and gave reasons for this.

Several children made claims, but only one proceeded all the way to a trial. The reasons given by the deceased for not making any provision for this particular son were:

1. He had purchased income producing properties for his son during his lifetime and had transferred the management of those properties to him.
2. His son was a potential beneficiary under various discretionary trusts established by the deceased during his lifetime.

(continued on page 2)

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

How poor Estate Planning can increase the risk of a challenge to your Will, cont....

3. His son had an indirect interest in other properties owned by a company established by the deceased, in which he was a shareholder.
4. The son had an estimated net worth of $2.5million at the date of the trial.

The Court granted the son $3million out of the estate in addition to the substantial wealth he already had.

The judge's reasons behind the decision included:

1. There was no real prospect of the son receiving any distributions from the trusts of which he was a beneficiary;
2. The deceased was misconceived in understanding the nature and estimating the value of the properties that he had passed to the son during his lifetime.
3. It is a well-established principle that discretionary trust rights will not be taken into account in family provision claims because discretionary beneficiaries have no right or entitlement to any assets of the trust.

Therefore, if a Will-maker intends to make provision for a beneficiary through a trust, it is necessary to ensure that control of the trust also passes to the intended beneficiary when the Will-maker dies so the intended beneficiary is not reliant on others to receive distributions.

It is also important to ensure that a Will-maker's reasons or explanations for their Estate Plan are clearly stated and accurate. If a beneficiary is excluded from a Will on an incorrect or misconceived basis, a Court will be more likely to overlook the Will-maker's wishes and make further provision for the applicant if there are assets available to do so.

These issues highlight the need for a thorough analysis of the Will-maker's assets, in which entities they are held and whether, or how, the Will-maker can achieve their objectives to pass assets, or control of assets, to their intended beneficiaries. At Solari & Stock, we undertake a careful analysis of these issues and often need to consult with the Accountants or Financial Advisers of our clients in order to ensure our clients achieve their objectives. If the objectives are not met, we ensure that steps can be taken to address these issues whilst the client is still able to do so or alternative solutions can be recommended.

Ensure your legal affairs are in order. Join us at our free Wills, Powers of Attorney & Guardianships Seminar on Wednesday, 11 March 2015. Refer to Page 1 for how to secure your spot.

Appealing Against Child Support Decisions

The Child Support Agency can make a range of decisions that can have a dramatic impact on the amount of Child Support payable. But what happens if you do not agree with the decision?

The Child Support (Registration and Collection) Act provides Child Support customers with the right for decisions to be reviewed. The first avenue of review is for the decision to be reviewed internally by Child Support. All requests for an objection must be completed in writing, except for objections to Care decisions. This request must be lodged within 28 days of the decision; otherwise you will need to request an extension of time. When lodging an objection, it is essential to include details of the decision being objected to and why.

When Child Support receives an objection they will contact both parents to advise that an objection has been received. Both parents will be given the opportunity to provide information and evidence to support their view. However during the objection process, it is important to remember that there is an open exchange of information. This means any documents provided by one parent will be provided to the other parent. Hence, it is essential that any information you do not want the other party to see, such as addresses and phone numbers, are edited before you provide the information. Child Support has a 60 day timeframe to make a decision regarding an objection; this timeframe is increased to 120 days if one or both parents live overseas. Once a decision is made, both parents will be sent a letter with the outcome of the decision and the reasons behind the decision.

If one parent is still not satisfied with the objection decision, there is the option to appeal further. Either parent has the right to appeal further, even the parent who did not lodge the objection. The next level of appeal is to an external and independent tribunal, the Social Security Appeals Tribunal (SSAT). There is no fee to appeal to the SSAT, and any Child Support objection decision can be appealed to the SSAT. The SSAT do not charge any fee to lodge an appeal with them. However appeals need to be lodged within 28 days of the objection decision, otherwise an extension of time will need to be requested. Appeals to the SSAT can be lodged online at http://www.ssat.gov.au/applying-for-a-review.

During their review, the SSAT will ask Child Support to provide a file with all of the relevant documents to the appeal. This file contains all the information provided by both parents, as well as any file notes and any further information that the Child Support Agency obtained in their decision making process. This can include comprehensive bank statements and ATO information. It is important to note that this file is provided to both parents, and there is limited information edited.

The SSAT will hold a conference and then a hearing with both parents. Both parents will have the option to provide further evidence to support their view and the SSAT can instruct either parent to provide specific information or documents. The SSAT will then make a decision either verbally at the hearing, or subsequently in writing. This decision must be implemented by Child Support.

If a parent does not agree with a decision of the SSAT, there is limited opportunity for further appeal. Decisions regarding care of children can be appealed further to the Administrative Appeals Tribunal. However for all other decisions they can only be appealed further on a point of law through the Court system.

For any queries in relation to Child Support matters please contact our solicitor, Fiona Gill, who has had many years' experience in this area and will be able to assist you.

Starting up a new business – Where to start?

Michael Solari

When you are setting up a new business there are numerous things for you to do in order to get started. It's often a question of knowing where to start because there are so many things you have to do.

From a legal perspective, we set out below some essentials you need to consider when setting up your business:

1. The structure for the new business. There would be a number of structures you could choose from, being a sole trader, a partnership, a company, a trust or a group of companies. Each individual structure will have different tax and liability implications. You will need to consider what structure is best for you and your business. Often, particularly where there is valuable intellectual property, it is worthwhile looking at putting the intellectual property into one company which merely holds the intellectual property and then licensing the intellectual property across to the trading structure.
2. In the event that there is more than one principal in the business, you will need either a partnership agreement (if you are operating the business in your sole names), a shareholders agreement (if you are operating through a company), or a unit holder's agreement (if operating through a unit trust). All of these agreements have similar objectives but different agreements are required depending upon the nature of the business structure.

   Some of the issues which should be addressed in such an agreement include the following:

   a) The percentage of the business each person is entitled to, who the decision makers are, and how are the decisions to be made (e.g. majority or unanimous vote).
   b) What decisions about the business, or the affairs of the organisation, is everyone to agree to as a majority decision or otherwise, the roles and responsibilities of each of the principals.
   c) What does each party need to contribute and how are you going to deal with future requirements for contributions from the principals. In particular, you need to address what is to occur in the event that one person isn't able to contribute money as required by the business.
   d) Where one or more principals are working in the business, determining their level of remuneration for their work as opposed to their share of profit of the business.
   e) What do you do if one of the principals isn't pulling their weight.
   f) What happens if a principal dies or wishes to leave.
   g) What happens if one person or the other wishes to sell the business.

   If a properly prepared agreement between the principals is put in place at the beginning when everyone is getting along, it makes it a lot easier when things happen, as they always do, in the conduct of the business. Quite often there is no particular right or wrong way to deal with some of these issues, but it is merely a question of making sure that everyone is on the same page from the outset in order to avoid unnecessary disagreements, which can then escalate into a dispute. The time and money involved in setting up the agreement correctly in the first place will far outweigh the time and cost to the parties in the event a dispute occurs.
3. Preparing a standard set of Terms & Conditions. If your business involves supplying products or services, you should have a standard set of terms. This way you are able to impose your terms upon your customers and make sure that everyone understands the basis upon which you are dealing with your customers. Some of the issues which need to be addressed in these are:

   a) The scope of your agreement i.e. what are you agreeing to do for your customer?
   b) How much are you to be paid and when?
   c) What rights you have to be able to terminate the agreement in the event things do not work out the way you wish.
   d) Making sure you are protecting your intellectual property rights.
   e) Where you are supplying goods to a customer, do your Terms & Conditions contain an appropriate Retention of Title clause and are you properly protecting your rights under that in accordance with the Personal Property Securities Act?
4. Protecting your intellectual property. You may need to enter into various confidentiality agreements with different people before you tell them anything about what you are doing. You may need to consider registering a trademark to protect your name and logo (the mere registering of a company name will not be sufficient). You also may need to register a patent or a design in the event that you have a new product.
5. Key contractor and employee agreements. It is important for you to set up clear written agreements with any contractors and also with your employees. It is critical to set out the terms of engagement of contractors and employees so that everyone knows their rights and entitlements. It also then gives you clear terms as to how to deal with issues such as notice on termination etc. Recent cases have raised the issue that where there is no express provision for termination in an employment contract and an award doesn't apply, a reasonable period of notice may need to be given and in some circumstances the period of notice, depending upon the seniority of the position, has been as high as 10 or 12 months.

Thinking of starting up a new business? Contact Michael Solari, Director and Head of our Commercial Team, for further information.