

Need Help After a Family Breakup?

Seats are limited so make sure you RSVP early!

FREE FAMILY LAW INFORMATION SESSION

Riccarda Stock, a Law Society Accredited Specialist in Family Law, will share her 25 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 Thursday, 15 February 2018

TIME 6.30pm

WHERE Level 2, 12 Central Road, Miranda NSW

Drinks & nibbles will be provided

RSVP 9540 4111 or admin@solariandstock.com.au

Happy New Year

As we start 2018 it is a good time to reflect on the developments and achievements at Solari & Stock in 2017. It was certainly an eventful and busy year.

Our Family Law team expanded to include 2 new Family Lawyers. Roberta Allen, who has joined the team from the Illawarra area with over 10 years in Law including lecturer at UTS and University of Wollongong, and Nicole Quirk, an Accredited Specialist in Family Law and qualified Independent Children's Lawyer with 17 years' experience in children's issues as well as complex financial matters. Roberta and Nicole join our principal Family Law Director Riccarda Stock and experienced solicitor Fiona Johnson providing expert advice and assistance in all areas of family matters.

We have also gained a highly experienced commercial and litigation lawyer Brian Maker, in addition to the rest of the commercial team, to assist Michael Solari, Director, in providing efficient and up-to-date legal advice in the areas of commercial law, wills and estates, business law, and property.

Solari & Stock was instrumental in promoting the new area of



Collaborative Law in family law matters with the establishment of the Southern Sydney Collaborative Professional Group. Collaborative Law facilitates the resolution of disputes without the need for Court litigation in a respectful, timely and solution based manner.

This year we are re-commencing our Free Seminars to our clients on various topics, so keep an eye on our website for further details of the program. The first seminar is on family law, the details of which are set out above.

We wish to thank our many loyal clients for their continued support.

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

- Business & Commercial Law
- Leases - Commercial & Industrial
- Business & Retail Advice & Documents
- Sale & Purchase of Businesses
- Litigation – Franchising
- Environmental & Local Government Law

- Family Law
- Property & Parenting Settlements
- Divorce
- De Facto Relationships
- Spouse Maintenance
- Child Support

- Estate Planning
- Wills, Powers of Attorney & Enduring Guardianships
- Deceased Estates
- Property Law & Conveyancing

Gift or Loan - what difference does it make in Family Law Matters?



Some people are fortunate enough to have families willing and able to provide them with financial assistance. Indeed, Prime Minister Malcolm Turnbull has famously suggested that 'parents helping their kids to buy a house' is one way to ease the current housing affordability crisis!

But what happens to this 'helping hand' when couples separate or divorce? Does it go back to the person whose family provided the money? Like all things in the Law, there is no one simple answer and the court will look at a number of different factors when considering what to do with the cash.

Gift or Loan?

Where parents or family members provide money to a couple it is important to establish whether the money was given as a 'gift' or a 'loan'. The difference is, that a gift stays within the pool of assets and is taken into account when dividing the matrimonial 'pie'. Basically, the gift stays 'in' and both parties will receive some benefit from it in the final settlement.

A loan on the other hand must be repaid. In the same way that a loan from a bank is deemed to be a liability, which must either be repaid out of settlement funds, or taken over by one party, loans from parents must also be repaid. The method of repayment will vary from case to case, but either way, the debt must be paid!

The recent case of Tyler [2017] FCCCA 1886 highlights the importance of being clear about the intention behind the giving of money. In that case the court rejected the husband's claim that a \$1.1million dollar payment to him from his parents to 'invest in the share market' was a loan, finding that it was, instead a gift. In this case there was no written agreement as to how the loan was to be repaid and on what terms. The husband was unable to convince the court that the money had been loaned to him and therefore the \$1.1million gift was included in the overall property pool.

Prevention is better than cure -

Divorce Without Court -

A quiet revolution is gaining momentum in Australia which offers divorcing couples a method of separating their assets and deciding on the living arrangements for their children, without Court but with dignity and respect. It's called Collaborative Law.

Solari & Stock have a team of family lawyers qualified in Collaborative Law to offer this new method to our clients to resolve their Family Law dispute.

What is Collaborative Practice?

Collaborative practice is a recognised method of resolving your family law issues without having to resort to litigation. It is a voluntary dispute resolution process, in which you and your partner work with collaborative lawyers, coaches (mediators) and other experts to creatively problem-solve issues, using face-to-face communication. It allows you and your partner to negotiate a resolution that targets priorities (whether they are financial or child-related) and that works for your family. It focuses on an end result, which satisfies both you and your partner, with little conflict.

What should I do?

It is important to be truthful about whether money or property received from family was intended to be a 'gift' or a 'loan'. Money always intended to be an altruistic 'gift' should not then become a 'loan' when there is a relationship breakdown. As can be seen in the above case, the court will look closely at the facts to discover what the real intentions were.

If, however, the intention was always for the money to be repaid the best way of proving this is to document the agreement in writing. Depending on individual circumstances there may be a number of ways to formalise the agreement to ensure that should the worst happen, the investment is preserved.

You should always seek legal advice before lending money to anyone, even family!

Of course, there are many factors that are involved in determining how assets should be divided when a relationship breaks down. This is particularly so where there have been significant contributions by family. If you need advice, please contact one of our highly experienced Family Lawyers.

- Collaborative Practice in Family Law Matters

How does it work?

In the collaborative practice process, you and your partner each have your own collaborative lawyer. Often the process is facilitated by a coach (similar to a mediator) who directs and guides you and your partner and your respective collaborative lawyers through the process, while ensuring everyone adheres to the objectives. Financial professionals such as accountants and financial planners, child consultants and psychologists and other experts may also be appointed to work impartially as part of the collaborative professional team to help you and your partner make informed decisions.

All participants sign a Participation Agreement prior to committing to the collaborative practice process. This is a contract that includes an agreement to settle the family law issues without involving the Court.

Collaborative practice relies on open communication and the sharing of information between you and your partner and the collaborative professional team. To ensure the process works, you and your partner need to voluntarily and freely disclose all information relevant to the matter and then make an effort to negotiate a mutually acceptable plan.

The full article on this topic can be accessed on our website

Next steps

We encourage you to contact one of our expert Family Law Collaborative lawyers to discuss whether collaborative practice is suitable in resolving your family law matter and reap the significant benefits for you and your family.

Buying or Selling a Business

When you are negotiating the terms of sale or purchase of a business there are many matters which need to be considered and these will vary depending upon the type of business involved. A number of the general considerations that need to be taken into account for most businesses are as follows:

1. Apportioning the value of the business between plant and equipment and goodwill

There is no set method for calculating the value of a business and you can use a combination of methods. Some methods of valuing businesses include an estimation of future profits, assessment of the value of the business assets & how much you think the goodwill of your business actually is worth. Once a sale price has been determined it is necessary to apportion it between plant and equipment and goodwill. There are tax consequences depending upon how the prices are apportioned and you need to obtain advice from your accountant about this before the contract is entered into.

2. Terms of the Contract

Some of the important things that should be addressed in the contract are:

- the business name, logo, website, client lists and contact details of the business;
- property, plant, equipment and any other items used in the business;
- agreements the business is a party to, for example leases, distribution agreements, hire of plant and equipment;
- any restraint on trade to be imposed on the vendor from competing in order to protect the business.

3. Employees continuing or working for the new owner

When a business is sold the employees either transfer with the



business to the new owner or are terminated. The buyer usually has the opportunity as to whether it wishes to offer continued employment to any of the employees. If any employees are to stay with the business their employment details need to be provided to the new owner including their outstanding leave entitlements which become the responsibility of the purchaser.

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Buying or Selling a Business, cont....

For matters such as unfair dismissal the period of service of an employee is taken to be the time that the employee first started working for the business, rather than when the employee starts working for the purchaser.

4. Training the new business owners as part of the sale

It is common practice for the buyer to request that the seller provide some training to the buyer prior to settlement and also after settlement. From a buyer's perspective, it is preferable for the training to occur prior to settlement as often a vendor has little interest in providing much assistance after the business has been sold. The buyer also needs to be in a position where they can hit the ground running on the day they take over the conduct of the business.

5. Taxation consequences of the sale

A vendor and a purchaser should obtain advice from an accountant on the taxation implications of the sale. Issues to be considered include GST, whether it is applicable or not, and Capital Gains Tax. There may be different consequences to both the seller and the purchaser based on the value attributed to the business and any portions of the sale price such as plant and equipment and goodwill.



Unfair Contract Terms - Recent Court Guidance

In November 2016, the ACCC published a report introducing a new framework aimed at protecting small businesses by identifying areas of concern regarding unfair provisions in standard form contracts.

This issue was recently considered by the Federal Court of Australia in relation to some standard form contract terms in the supply contracts for waste collection services of JJ Richards & Sons (JJR).

In the first case dealing with this issue under the new regime the Court identified various terms in the standard form contracts as being unfair and therefore of no effect. These terms included clauses we see in many contracts such as:

- an automatic renewal clause which meant that the contract continued beyond its initial term unless the party gave written notification of its termination;
- a clause giving JJR a unilateral right to vary the contract price;

This case highlights the need for businesses to consider any terms in their contracts which impose onerous terms on customers, whether they be businesses or consumers.



It's easy to be green.

If you'd like to save paper by receiving our newsletter via email, just contact us on admin@solariandstock.com.au and register your email address.

These articles are for the benefit of our clients and business associates. The document is not intended to be a definitive analysis of legislation or professional advice. You should take advice before any course of action is pursued.

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