

### MARKET REVIEW

After a tumultuous beginning to 2020 with the devastation of the 2019/2020 bush fires, floods and the Corona Virus pandemic taking hold; consumer and business confidence has fallen to a new low with many businesses closing indefinitely and unemployment rates at a new high rising above 7%. At the time of writing there is no clear end to the pandemic with a second flareup in Victoria, NSW and New Zealand making consumers especially cautious with no approval for a Corona Virus vaccine as yet.

### NEW STAFF APPOINTMENTS

Solari and Stock have appointed two new staff members of late. The first being Rebecca Exley who joins the Commercial Law Team headed up by Michael Solari. Rebecca joins us after commencing her career in the UK and moving to Australia to continue her legal profession. The second new appointment is Kate Allenby, who will be taking care of all aspects of Marketing for Solari and Stock including Website and Social Media and client communications.

Please find below articles that we have produced relating to a number of current topics; COVID 19 and the affect it is having separated parents and children, what constitutes a DeFacto relationship, the dangers of directors guarantees and the risks of do-it-yourself Wills and Estate planning as well as introducing one of our Team members-Adrian Stock.

If you would like to discuss any of these articles further with one of our Team, or if you require an appointment please contact us on 8525 2700 to make an appointment.

### INTRODUCING ADRIAN STOCK

Adrian Stock commenced his career in the legal industry in 2019.

Whilst working part time in management Adrian completed a Bachelor of Commerce in 2011 and a Bachelor of Law in 2014 both at the University of Wollongong.

Following the completion of his studies he founded and operated his own business for several years, providing invaluable experience before joining the team at Solari and Stock.

Adrian applies his practical knowledge of business to assist his clients in resolving their matters in the most commercially efficient manner. Ensuring he takes the time to listen to his client's needs and goals, Adrian advises them on the most practical and cost-effective solution available to them.

Whilst predominantly practicing Family Law, Adrian also assists in other areas such as litigation, strata, leasing and wills and estates.

Adrian is a member of the Law Society of New South Wales and is admitted to the roll of the Supreme Court of New South Wales and High Court of Australia.



### THE TOP TEN GUIDE FOR SEPARATED PARENTS DURING COVID 19

Many families have found the global pandemic as particularly stressful. Both parents and children are very anxious about the situation at this time. Parents are facing the stress of money and health worries in the pandemic, as well as the normal stresses and pressures that arise from raising children generally. The Family Law Section of the Law Council of Australia have prepared a list of "The Top Ten Guide for Separated Parents During Covid 19" and we thought we would like to share a summary of their list with you:

#### 1. Stay Healthy

Model best practice habits for the children to minimise the risk of spread of the virus, including frequent and thorough handwashing and social distancing. Let the other parent know what you are doing in your household so you can both show the other that you are taking the virus seriously and you are both on the same page.

#### 2. Be present and considered

This is a serious health challenge. Children would have heard and read a great deal about the Virus through friends and their school networks and media. Be present

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- Business & Commercial Law
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- 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



in their lives. Be present to help them accurately process the information in a way that allows for peace of mind.

### 3. Meet your obligations

If your parenting arrangements are regulated by a Court Order or agreement, you must still meet the terms of that Order or agreement unless you have a reasonable excuse. If there are practical reasons for problems because of the pandemic, then find solutions with the other parent, give the other parent notice.

### 4. Adapt

As things change in society, with closing of the schools or remote learning, cancelling of weekend sports or restrictions on travel, adapt to the changes. Find other ways of doing things to ensure your children's needs are still being met. If restrictions stop physical movement or contact, think of other ways to communicate through digital communication, Skype, zoom, facetime.

### 5. Be Open

Parents need to be open and honest with each other about their and their children's health and risk of exposure during the pandemic. If either the children or someone they are in close contact with becomes unwell or develops symptoms, the parent should immediately advise the other parent so as to ensure that both parents are aware. You need to ensure that your child has any testing or self-isolation that is recommended. Being open and honest with the other parent will alleviate their concerns and/or worries and will help stop the spread of the virus.

### 6. Be Mutual

Think about how you would like the other parent to engage with you, and model that type of engagement with them. All parents will benefit from mutual give and take at this time.

### 7. Be compassionate

It is difficult to know how to respond in this difficult time, and sometimes the other parent's response to a situation may seem disproportionate to your view. This is a time to try to be calm in situations of high stress. You are more likely to reduce conflict if you are calm and compassionate to the other person.

### 8. Be solution focussed

This is a time, more than ever, where parents and adults need to try and compromise for the sake of the children. There is likely to be less availability for courts

and Mediation services to make decisions about everyday parenting matters. It is far better for the children if their parents can both come to common sense solutions, without the need to revert to litigation.

### 9. Help out to the extent you can

Parents may lose jobs or experience a reduced income. This will likely impact on both households. Parents need to be understanding of the other parent's financial position and offer to help out where they can.

### 10. Be Patient and Positive

The pandemic isn't going to end overnight – Changes to the way we work, socialise and communicate and parent our children will come in over the next few weeks and months. Be patient and positive and make a conscious effort to embrace the good and joyful moments in each day.

For a full copy of the original 'Family Law Section's Top Ten list', see the attached link [https://www.familylawsection.org.au/images//documents/online-news/FLS\\_Ten-tips-for-managing-parenting-in-a-pandemic\\_20200319.pdf](https://www.familylawsection.org.au/images//documents/online-news/FLS_Ten-tips-for-managing-parenting-in-a-pandemic_20200319.pdf)

For more helpful links and advice about managing the stress and anxiety that arises from the Coronavirus see the following link:

<https://www.cdc.gov/coronavirus/2019-ncov/prepare.managing-stress-anxiety.html>

## YOU MAY BE IN A DE FACTO RELATIONSHIP EVEN IF YOU DON'T LIVE TOGETHER ALL OF THE TIME!



The term 'de facto relationship' is misunderstood. To many, de facto status is for those couples, who are in a committed relationship and are living together.

In 2009 changes were made to the laws around de facto relationships and the definition of a de facto was changed.

Under the Family Law Act, a de facto relationship is when two people are not legally married or related by family and have a relationship as a couple living together on a genuine domestic basis. However, in applying this law, the Court has found that you could be in a de facto relationship even if you don't share a home together all of the time and even if you have not lived together for two years. You can also be in a de facto relationship if you are married to someone else or in a de facto relationship with someone else.

A number of the factors are considered when determining a de facto relationship. These may include:

- The duration of the relationship.
- Financial dependence or interdependence e.g. shared bank accounts or loans.
- The nature and extent of shared living arrangements.
- Whether there is a sexual relationship.
- Shared ownership or use of any property.
- Whether there is a mutual commitment to a shared life.
- Whether there is any shared care and support for children.
- Public perception of the relationship (your Facebook relationship status, all those cute couple photos on Instagram together).

Not all these factors are required but the more you tick the more likely the Court will consider you to be in a de facto relationship.

It can be difficult to pinpoint what defines when you become a de facto. It depends on the circumstances. You may consider asking yourself:

1. Do you and your partner share a home, even on a part-time basis?
2. Do you provide financial support to your partner or vice versa?
3. Do you and your partner intermingle your finances?

If you are recognised as de facto under the Family Law Act you could be subject to a claim for property settlement or a spouse maintenance order. If you think you could be in a de facto relationship it may be beneficial to get some legal advice.

The expert team of lawyers at Solari & Stock, including 2 Family Law Accredited Specialists, have a wealth of experience in dealing with the complexities and sensitivities of Family Law, including de facto relationship issues.

## THE DANGERS OF DIRECTOR'S GUARANTEES



It is common for directors of companies to be required to provide a director's or personal guarantee to guarantee the performance of a company's obligations under contracts entered into by the company.

In the absence of a personal guarantee, a director of a company is only personally liable for debts of the company and claims against the company where the director is in

breach of their duties as a director.

Third parties such as banks, landlords and suppliers will often require directors to personally guarantee that the company will repay its debts and comply with its obligations under contracts entered into. Where personal guarantees are provided, the third party can personally pursue the guarantor director. Directors therefore need to be careful when negotiating and providing personal guarantees and should consider the extent of their exposure, whether that exposure may be limited and what rights they may have against the third party seeking the guarantee and any co-guarantors.

Some common issues which directors need to consider include:

### 1. Guarantee Continuing

Most guarantees are not limited in time. This means that the guarantor is liable for any past, present and future obligations owed by the company. Even once the initial debt for which the guarantee was provided is repaid, the director may still be liable for any subsequent indebtedness between the company and the third party.

### 2. Joint and Several Liability

Many companies have two (2) or more directors. Guarantees are usually sought from all of the directors of the company and they are typically liable jointly and severally for the debt of the company to the third party. This means that the third party is able to recover against either one or all of the guarantors, in the third party's absolute discretion, any amounts owing to the third party by the company. This right applies even before the third party has exhausted all attempts to seek recovery against the company. Usually the third party will focus its recovery attempts on whichever guarantor it believes has the best capacity to pay, or has personal assets which can be utilised to achieve the quickest result.

### 3. Director's Guarantees do not cease when directorship ceases

A person's resignation as a director does not mean that any guarantee that was previously provided by that person in their capacity as a director ceases. Therefore, if a person is resigning as a director of a company, it is essential that the person seek a signed release of their obligations as guarantor from any creditor and co-guarantor.

### 4. Guarantees may be limited or unlimited

Guarantees are either limited to the extent identified in the guarantee document, or they may be an "all monies guarantee" that is, the guarantor's potential liability is unlimited and covers all money due by the company to the third party.

### 5. Rights against the company and co-guarantors

If one guarantor is pursued by a third party, that guarantor can make a claim against any co-guarantors or the company whose debt it guaranteed. A guarantor is able to make a claim against co-guarantors seeking that they pay their equal share of the debt which the guarantor has been ordered to pay. However, the main risk associated

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### THE DANGERS OF DIRECTORS GUARANTEES cont ....

with this course of action is whether the company or the co-guarantors have the assets available to provide the required contribution. Further, such action would typically involve the guarantor initiating Court proceedings.

It is therefore imperative that directors be aware of their obligations prior to entering into guarantees and steps are taken, where available, to minimise any potential exposure.

Directors should also consider asset protection strategies when acquiring personal assets. For example, where a director acquires personal assets, consideration should be given as to whether these assets should be put in the director's name or, for example their spouse's name. On occasions it may be necessary when acquiring personal assets, in order to satisfy a lender's requirements, for there to be a minimal proportion of asset ownership held by the director. In many instances, for example when a director is buying their own home with their spouse, in order for the lender to advance the money to assist in the purchase of the property, they may require the director to have at least a minimal holding in the property (for example 1%). There are various asset management strategies, some of which may be employed at a relatively low cost, others however may involve significant cost and it may be more appropriate to consider such strategies at particular points in time, for example, when the home is being sold and a new home is being bought.

The Solari & Stock Commercial and Property Team can provide advice and assistance in relation to director's responsibilities and strategies for minimising the risk of personal assets being exposed.

## RISKS OF DO IT YOURSELF WILLS AND ESTATE PLANNING

A recent Queensland case highlighted the dangers of undertaking your own estate planning and preparing a do it yourself will.

A couple married in 1984. They both had children from previous relationships but did not have any children together. They prepared a joint will at home which appointed one of each of their children as joint executors, provided for the survivor to stay in the family home until their death, and directed that on the death of the survivor the children of each of the husband & wife should receive 50% of the assets.

The couple owned the home as joint tenants. This means that legally upon the death of the first one of them the house passed to the survivor, regardless of what was in the will.

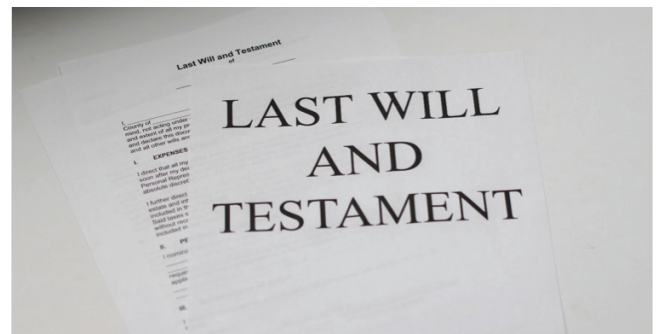
The husband died. The wife sold the family home after it had been transferred into her sole name and then asserted that she was not bound by the terms of the will.

Disputes arose, and Court proceedings, involving 2 separate Court actions, ensued which took over 3½ years to be determined.

Eventually, the Court found that the parties intended to make a mutual will and that they had intended to sever the joint tenancy ownership of their home by the making of the mutual will. This meant that the wife did not inherit the home upon the husband's death automatically when he died, pursuant to the joint tenancy, but rather it was to be dealt with under the terms of the will.

However, the lesson to be learned from this is that although wills and other estate planning documents may appear to be simple and may be able to be done using a will kit or a do it yourself will of some form, often issues arise due to the fact that people do not understand the effect of the will and the nature of the ownership of the assets. Misunderstandings in relation to the preparation of wills can turn simple tasks and simple estates into complicated disputes, which can involve significant stress and expenses being incurred by the surviving beneficiaries; all of which could have been avoided by the couple entering into a Mutual Will Agreement.

It is always better for persons to have properly prepared wills. At Solari & Stock our solicitors can advise in relation to all of the issues which need to be addressed in your wills and prepare properly drafted wills covering and reflecting our client's needs and desires.



*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. Did you find this newsletter useful? If yes, please feel free to forward it onto a business colleague or friend.*

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