

### MARKET REVIEW

With the end of 2020 looming, COVID19 infection rates in Australia are finally falling, yet COVID-19 is still very present at the time of writing. After many months of tight restrictions Australia wide, we are slowly stepping out of lockdown, however the Australian economy has taken a hit. With the extension of the Job Keeper program until 28 March 2021, albeit at a reduced rate, the unemployment rate started to increase to 6.9% in September after falling to 6.8% in August 2020, with 937,400 people unemployed. A high degree of uncertainty still surrounds the outlook both within Australia and abroad, however, a stronger recovery is possible if the virus is controlled domestically at a faster rate.

Please find articles that we have produced relating to a number of current topics; Domestic Financial Abuse, New protections for 'off the plan' purchases, Where to start with a deceased estate, Electronic and remote signing of documents and Deeds and we introduce one of our newest Team members-Rebecca Exley.

With the end of the year fast approaching, please keep a note of our Christmas closure dates. Our office will close at 1pm Wednesday 23rd December 2020 and will reopen 9am Monday 11th January 2021.

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.

### INTRODUCING REBECCA EXLEY

Rebecca originally qualified in the UK having completed her Bachelor of Law (Honors) at the University of Lincoln in 2008, her Legal Practice Course at the College of Law London in 2009, and most recently has completed her Legal Practitioners Admission Board Diploma in Law at the University of Sydney.

She was admitted to the NSW Supreme Court in August 2020 and to the High Court of Australia in September 2020.

Rebecca brings experience from both the UK and Australia having worked with high profile clients. She has worked for high net worth clients assisting them in their estate planning needs such as succession planning,

tax planning in the context of estate administration, trust creation, Will drafting, estate administration and guardianship matters.

In addition to Estate Planning, she has worked for a variety of commercial businesses and law firms in Sydney and Adelaide advising on financial services compliance obligations and regulatory law.

Rebecca joined Solari and Stock as a member of the Commercial Law team in 2020.



### CONVEYANCING ALERT - QUICONTRACT

Although we haven't had any first-hand experience in seeing this implemented, it has been brought to our attention that the Real Estate Institute of New South Wales has prepared a document which they refer to as a QuiContract. The objective of this document is for the Selling Agent to quickly prepare a contract so that a residential property can be marketed for sale as soon as possible. Although claimed as enabling the property to be marketed as soon as it is prepared, due to the fact that it doesn't contain all of the documents that are legally required to be attached to a contract, doesn't have any of the protections that are usually included in a contract properly drafted by a solicitor and a real estate agent is prohibited from providing legal advice there are substantial risks to both vendors and purchasers in the event that they agree to allow a real estate agent to prepare such a contract or to in fact sign such a contract.

It is a pre-requisite for an agent to hold a copy of the contract that is proposed by the vendor to be entered into prior to the Agent being able to start marketing a residential property for sale. In most instances the documents which are needed to be attached to the contract can be obtained within a short period of time (in many instances within 2 to 3 business days). If the vendor's solicitor is engaged quickly enough, by the time the agent has prepared the marketing materials to enable marketing to commence, a proper legally enforceable contract is usually available to enable an agent to start marketing the property for sale.

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

- Business & Commercial Law
- Leases – Commercial, Industrial
- 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

It would be our strong recommendation that if any of you are approached by a real estate agent to authorise them to prepare such a QuiContract in relation to a property you are selling, or to sign such a contract in the event that you are selling or buying a property, that you avoid doing so and that you contact us immediately.



Photo by Elizabeth Bay on Unsplash.

## DOMESTIC FINANCIAL ABUSE

Domestic Financial abuse is a form of family violence in which one partner attempts to exercise power and control over their spouse by limiting their access to finances and dictating the terms on which money is to be spent. It often happens alongside other types of domestic violence, such as physical or emotional abuse.

In many relationships there may also be one party who assumes the responsibility of looking after the finances, and as such may have control or access to the bank accounts. But where is the line between merely looking after the finances and financial abuse?

### What amounts to financial abuse?

There are many different actions that can amount to financial abuse of a partner. If your partner is committing financial abuse against you, they will attempt to exercise power and control over you in the following ways:

#### Controlling your access to money

- dictating a limit on the amount you can spend each week
- refusing to provide you with enough money for living expenses
- making you ask permission to access money or to spend your own money
- restricting your access to bank accounts, credit cards or cash
- preventing you from working or studying

#### Using your money without your knowledge or consent

- withdraws or transfers large amounts of money from your bank account
- forges your signature on cheques
- hides bank or credit card statements

### Signing legal documents

- forces you to sign documents that you don't understand
- pressures you to take on a loan or a debt on their behalf
- forges your signature on legal documents

### Threatens or punishes you

- threatens you or makes you feel guilty if you use money
- makes you feel inadequate or that you can't be trusted with money
- questions or punishes your spending

### Preventing financial abuse

In order to protect yourself from financial abuse, the first step is to recognise its occurrence. Financial abuse is a form of domestic violence and can be a warning sign for other forms of domestic violence. If your partner is committing any of the above acts, you should contact the NSW Domestic Violence Helpline on 1800 65 64 63 and seek independent legal advice from your Family Lawyer.



Photo by Roberto Tumini on Unsplash.

## NEW PROTECTIONS FOR "OFF THE PLAN" PURCHASES

New laws commenced on 1 September 2020 are designed to protect purchasers of off the plan apartments.

The New Residential Apartment Buildings (Compliance and Enforcement Powers) Act has commenced as part of the New South Wales Government's objectives to have a better framework to protect consumers who have been wronged in the past by poor building practices.

Under the new Act a developer is required to notify the Secretary of the Department of Customer Service of when construction is expected to be completed and when an application for an Occupation Certificate is expected to be made.

That notice needs to be given not earlier than 12 months before the expected completion date and not less than 6 months before the expected completion date. Although the expected completion date can change the developer has to be careful in providing its estimate as in the event the actual completion date changes by more than 60 days then a further notice has to be issued to the Secretary.

The intention of providing the notice is to enable the Secretary a reasonable period prior to the completion of the building work to have the construction of the building examined and to detect and act on any serious building defects before an Occupation Certificate is issued.

As part of the overall reforms the definition of an Occupation Certificate under the Environmental Planning and Assessment Act has now been amended to remove Interim Occupation Certificates from the planning framework and Occupation Certificates now can only be issued for completed buildings or completed parts of buildings. Therefore, if the development is a staged project there could be multiple Occupation Certificates required to be issued and each one will have to be part of the notice framework.

The Act also gives the Secretary the power to prohibit the issue of an Occupation Certificate where a developer has failed to give the expected completion notice or does so outside of the required timeframe, the Secretary is satisfied that a serious defect in the building exists or a building bond required under the Strata laws has not been given to the Secretary. Such an order is known as a prohibition order.

Once a prohibition order has been issued the Secretary is required to give notice of that to the local council or the relevant certifier for the building work.

In addition to a prohibition order the Secretary also has the power to issue a stop work order where in the Secretary's opinion the building work is or is likely to be carried out in a manner that could cause significant harm or loss to the public or occupiers or potential occupiers of the building or is likely to cause significant damage to the property.

Once an order has been made it remains in effect until the order is complied with, expires (if a date is specified) or is otherwise revoked by the Secretary or the Court.

The Act does allow for undertakings to be provided by a developer but only as an alternative to an order and not in satisfaction of an order that has already been given. This will then prevent a situation where if a prohibition order has been made the developer would not be able to give an undertaking to carry out the works but will actually have to carry out the works.

This new legislation is a welcome step in the right direction and enhances protections for purchasers of Off the Plan apartments.

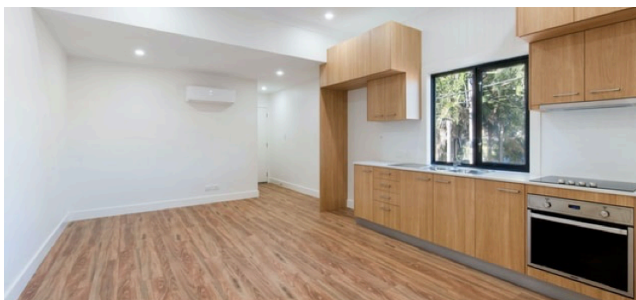


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## WHERE TO START WITH A DECEASED ESTATE

Managing the estate of a deceased friend or loved one can be a very overwhelming task. Aside from processing the sadness of loss, you have the added pressure of honouring someone's wishes while trying to understand jargon in a complicated legal process.

The first question you need to ask is simple: do they have a Will?

### There is no Will

If your loved one has passed away without a Will, there will be no executor appointed to start work on the estate and there won't be any formal instructions to help you determine what happens with their estate. Things can get very complicated, very quickly.

We understand that losing someone close to you is very distressing. In addition to the emotional strain of dealing with the loss, you may need to quickly take care of practical matters such as organising their funeral, contacting different organisations (such as utility providers and superannuation funds), and working out the assets and debts of the estate.

Having expert help and advice can make all the difference.

### How is an intestate estate dealt with?

Dying without a Will is known as "dying intestate". This is not an ideal situation, but it's far more common than you think. So, where do you start?

If your loved one has passed without a Will, an application needs to be made to the Court to appoint a person to act as the Administrator of the estate. This is because there is no executor appointed to manage the affairs.

This application is referred to as an application for a Grant of Letters of Administration on intestacy and it's the first thing you need to do.

In all cases where it is necessary to apply for a Grant of Letters of Administration, it is usually the person with the greatest entitlement to the estate, assets as determined by applying an intestacy formula, that applies for the Grant. For example, if a spouse or partner survives the deceased, they would usually make the application. If the deceased is survived by children (and no spouse/partner) then one or more of them could apply.

### There is a Will

When someone names you as the executor of a Will, you become responsible for carrying out their final wishes following their death.

Being an executor of a Will can feel overwhelming for some people, but it doesn't need to be.

Your main role as executor is to represent the person who has passed away and wrap up all of their personal, financial and legal affairs. Ideally, the Will-maker will have explained how they'd like you to carry out your duties in their Will.

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## WHERE TO START WITH A DECEASED ESTATE cont ....

Here is a list of the main responsibilities you have as an executor of a Will:

1. Identify the assets and liabilities of the estate,
2. Protect these assets (i.e. store them safely where necessary and make sure they're insured),
3. Apply to the Court for a Grant of Probate where necessary,
4. Collect the assets of the estate and hold them on behalf of the estate prior to them being distributed,
5. Make sure all estate liabilities, including tax, have been paid,
6. Defend the estate from any challenges, and
7. Distribute the estate to the beneficiaries in accordance with the terms of the Will.

If you need advice on administering a Will, our expert Wills & Estates lawyers can guide you through the process and ensure you make informed decisions.

### Do I have to accept the responsibility of being the executor?

No. You are not legally obliged to take up the appointment of executor even if you agreed to accept the role while the Will-maker was alive. A lot can happen in the time between the writing of a Will and the time when the administration of an estate is required. We can help if you decide that you don't want to act as executor.

### What is the difference between a Grant of Probate and a Grant of Letters of Administration?

An application for a Grant of Probate is made to the Court by an executor appointed by a Will. The Grant of Probate confirms that the Will is valid, and that the executor has the authority to deal with the assets of the estate. Where probate is granted all assets vest in the executor retrospectively back to the date of death.

An application for a Grant of Letters of Administration is usually made to the Court where there is no Will and, therefore, no appointed executor. In this case, a beneficiary of the intestate estate will apply to be granted the formal right to administer the estate as Administrator. You may also need to make this type of application when

there is a Will but the nominated executor refuses or is unable to take up the role. On the granting of Letters of Administration, all assets vest in the administrator as and from the date of the granting of Letters of Administration.

An application for Probate or Letters of Administration is a paper driven application to the NSW Supreme Court.

Questions and disputes can arise relating to the choice of a funeral director, payment of funeral expenses, erection of a plaque and the like.

### Assistance with administering an estate

We can help take the pressure off you during this difficult time. Our expert lawyers can manage everything, and you can be sure that the estate will be handled professionally and impartially. We can handle the entire administration process.



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*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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