



SOLARI & STOCK

LAWYERS



2023 YEAR IN REVIEW

As the festive season approaches, we take a moment to extend our sincere gratitude for trusting Solari & Stock with your legal matters and wish you a Merry Christmas filled with good health, and the company of loved ones. Please note; our office will be closed from 1pm Friday December 22nd 2023 and will reopen at 9am on Monday January 8th 2024.

We have put together a few articles written by our team of Solicitors and our guest Simon Boylan from Zenith Aged Care for you. If you would like to discuss any of these articles, or make an appointment with one of our experienced team, please contact 8525 2700 and send us an email to law@solariandstock.com.au.

Articles in this edition:

- Top tips for separated parents at Christmas
- The rise of interest rates and the fall of relationships
- Contesting a Will
- Secret Centrelink

TOP TIPS FOR SEPARATED PARENTS AT CHRISTMAS

As we are fast approaching the 'Silly Season', we need to seriously think about taking care of ourselves and our children at Christmas! Emotions are often high at Christmas and especially so for separated families. Here are some of our top tips:

1. **Be Kind** - Whilst Christmas is a time for joy and celebration it can often be a difficult time for families dealing with grief and/or separation. Christmas is a time where children (whether young or adult) are often reminded that their family are not altogether. Regardless of the situation, try and be kind to the other parent and remember that your children are always watching you and that they model themselves on your behaviour.
2. **Plan your Care Arrangements for your Children for the Christmas and the School Holidays well in advance** - If you have not already worked out when your children are going to be spending time with you over the Christmas period or during the school holidays this will need to be sorted out ASAP! If you're the more organised person, it might be an idea for you to send them a draft calendar which marks out the days when the children are in each of your care. Ask them what they think and check this against what your court orders. There's nothing worse than leaving it to the last minute and arguing about what is happening on Christmas Day!
3. **Plan Ahead for Financial Matters over the Holidays** - This will mean that you should consider a budget for yourself for the December/January school holidays. Start your Christmas shopping early, and talk to your ex-partner if you are worried about money and ask whether they can help.

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Our team of experienced lawyers can provide you with expert legal advice for all 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

5. **Communicate with your Ex Partner** – Open a dialogue with your ex-partner about Christmas, whether by phone, email, text message or in person. Talk about important issues over Christmas:
- *Are either of you comfortable seeing or spending time with each other as a family over Christmas?*
 - *Can we divide the Christmas shopping between us this year?*
 - *Do we have to work out whose house Santa is going to this year?*
 - *What presents are you buying for the children, so we don't double up? (But sometimes kids are ok to double up and have the same toy at both houses!)*
 - *Should we talk about how much money we are spending on the children at Christmas? (to avoid no one going over the top and making the other parent look bad).*

You would be surprised how much these small gestures help your ability to communicate with each other in the future.

6. **Be Kind to yourself** – Whilst most of the focus during Christmas and the school holidays, is on your children-find time to have time to be kind to yourself. Buy yourself a Christmas present, a Massage, a Hammock and some good reading material! Think about enrolling your children in activities or organising play dates or vacation care, so you can also have time to yourself. The children will do better in your care if you're looking after yourself!
7. **Reach out for help if you're struggling** - If Christmas is a difficult time for you, reach out to family and/or friends for extra support. Don't be afraid to ask for help. There are many support services available providing support for women, men and families generally.
8. **Give** - Reach out to help others that are in need at Christmas – Teach your children to give and be charitable, especially at Christmas. Think about ways that you can help your children help others who are less fortunate than yourself, whether it involves donating to your local Salvation Army, St Vincent's De Paul, Red Cross buying a present to put under the Christmas Tree at your local Kmart. It will help your children grow emotionally and will make them feel good about themselves.

If you need assistance with trying to plan ahead for the Christmas period, whether about trying to resolve your care arrangements for your children, or financial issues, feel free to contact our Family Law Team.



Article written by Nicole Quirk | Photo by Jonathan Borba on Unsplash

THE RISE OF INTEREST RATES & THE FALL OF RELATIONSHIPS

Interest rates are continuing to rise. We have had 13 interest rate rises since rates started to increase in May 2022, and predictions suggest increases may continue for some time. What does this mean for couples and the impact on marriages?

Many homeowners are hoping that there will be a pause, but it seems unlikely as inflation still remains high. If the RBA decides to continue to raise cash rates, then most banks will follow and raise their home loan rates as well. This is continuing to put increased pressure on marriages in making home loan repayments and the payment of general living expenses.

If you are worried about the impact of the rise in interest rates on the payment of your home loan, you can do the following:

1. Review your loan. Research what other rates and loans are on the market.
2. Discuss with your lender about other available options such as fixing all or part of your loan. You could even consider asking them for a lower rate if you have seen other rates on offer.
3. Consider switching lenders if you see a more competitive deal.

Unfortunately, these times are placing pressure on many couples leading to the breakdown of relationships and the selling of property. If you are living together in a de facto relationship or married and the mortgage is in both of your names, you need to remember that both parties are liable for the full mortgage repayment must be met. Even if at the moment only one of you pays the mortgage, in the event that things do not work out and you separate, the full mortgage balance will need to be paid. If only one party pays their share of the mortgage and the

full repayment is not paid, it will still be recorded as a "missed payment". This may affect your credit profile.

Banks will sometimes consider a deferral or moratorium on payments under hardship circumstances especially when there has been a breakdown of the marriage. Hardship applications ought to be considered under these circumstances.

Also, upon a relationship breakdown if the mortgage payment is not being met, it may be appropriate to consider making a Court application for an Order requiring a party to make the payments or to liquidate other assets so that funds can be made available for the mortgage payments.

It is wise to obtain sound Family Law legal advice as early as possible so that all options can be explored and to avoid the serious consequences that can occur upon the default of mortgage payments.



Article written by Shweta Kumar | Photo by Eric Ward on Unsplash

CONTESTING A WILL

Contesting a Will is becoming more prevalent; complex family dynamics, relationship breakdowns, and increased wealth, are giving rise to disputes on death.

Can a Will be contested?

Yes, the succession laws in Australia allow for someone to contest a Will based on:

- the validity of the Will; or
- inadequate provision from the deceased's estate.

When is a Will invalid?

A person must have mental capacity when making a Will, and they generally must meet the requirements of the case *Banks v Goodfellow* (1870) 5QB 549. The general test is the person needs to know and understand:

- the effects of making a Will;
- the extent of their assets;
- the nature of any claims that may be made against them.

If the person does not know and understand the above, the Will may not be valid.

A Will may also be invalid because:

- the actual intentions of the deceased are not reflected in the Will;
- the deceased did not know and approve of its contents;
- a person had undue influence over the deceased when making their Will; or
- the deceased was misled or has been the subject of fraud.

What is inadequate provision from an estate?

Determining whether 'inadequate provision' has been made from an estate requires an understanding of the Succession Act 2006 NSW, and the pathway to eligibility.

Generally, the Court will assess the relationship between the deceased and the person claiming, as well as the future needs of both the person claiming, and any beneficiaries of the estate, as compared against the size of the estate. There is no one size fits all.

Who can challenge the validity of a Will?

Any person with an interest in a deceased estate can challenge the Will if they believe it is not valid. This can include:

- a beneficiary named in a previous Will;
- a beneficiary named in the current Will;
- someone who would otherwise be entitled if the deceased had died without a Will.

Who can bring a claim for inadequate provision?

The Succession Act 2006 NSW sets out who is an 'eligible person' to make such an application to the Court. An eligible person of the deceased may include:

- a spouse, de facto, former spouse and former de facto;
- a child or step-child;
- grandchildren;
- a parent; or
- other dependents and carers.

How long do I have to contest the validity of a Will?

Although there isn't a strict time limit, it may be more difficult to contest the validity of a Will once probate has been granted by the Court. Seeking specialist advice is recommended as soon as becoming aware of a potential challenge to the validity of a Will.

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CONTESTING A WILL cont....

How long do I have to bring a claim for inadequate provision?

In NSW, someone has 12 months from the date of death to issue proceedings based on inadequate provision. Beyond this, leave of the Court will be required.



Article written by Rebecca Exley | Photo by Bookblock on Unsplash

SECRET CENTRELINK

We would like to explore some lesser known Centrelink legislation that can be used to improve individuals and couples Centrelink outcomes

When one or both members of a couple move into a care situation, they are treated by Centrelink as Separated by Illness. For the purpose of calculating Aged Pension entitlements, this means that although they continue to be tested under the couples income and assets tests, they are paid at the single rate of Pension, instead of the couples rates i.e. maximum pension payable rises from \$826.50 to \$1096 per fortnight.

There is an additional benefit to this that many are not aware of. For a couple living together in their home, the Age Pension cuts out completely once their assets (aside from the home) reach \$1,003,000. Where a couple are separated by illness, due to the higher Pension payable, this figure rises to \$1,183,000, meaning that a couple who were never receiving a Pension, may suddenly qualify for at least a part pension where one or both enter a care situation.

Where a couple sells their home having entered care, the asset limit as a non homeowner rises from \$1,245,000 to \$1,425,000 meaning that couple can own \$180,000 more in assets before losing the pension completely.

It is crucial to seek advice prior to making major changes, to ensure you do not find yourself in a worse situation. If this raises issues for you, please contact Simon Boylan from Zenith Aged Care on 9525 7977.



Article written by Simon Boylan from Zenith Aged Care
Photo by James Hose Jnr on Unsplash

Thank you.

The following members of the Solari & Stock Team are celebrating their work anniversaries. Thank you for your continued enthusiasm and for being such valuable members of our team!

- Kerrie Reynolds - 7 years in October
- Shweta Kumar - 1 year in October
- Vicki De Bonis - 10 years in October
- Kristin Attard - 2 years in November
- Nicole Quirk - 6 years in November

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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