

MERRY
Christmas
SOLARI & STOCK
LAWYERS



DECEMBER NEWSLETTER 2024

Welcome to Solari and Stock's end of year newsletter for 2024! As we approach the festive season, our team of Solicitors have compiled a variety of insightful articles for you to enjoy. Whether you have legal questions or are in need of assistance, our experienced team members are here to help.

Feel free to contact us at 8525 2700 or email us at law@solariandstock.com.au.

Articles included in this edition:

1. Meet the team - Riccarda Stock
2. Wishing you a sharing Christmas - Tips for separated parents
3. Wills & blended families: Safeguarding the family home and supporting the surviving spouse
4. If there is a delay to my build, can I recover damages from the builder?

MEET THE TEAM - RICCARDA STOCK

I am a Director of the firm, a Law Society Accredited Specialist in Family Law and a qualified Family Law Collaborative Lawyer. I head the Family Law team of experienced and passionate Family Lawyers at Solari and Stock.



I have been practicing in and around the Sutherland Shire for over 30 years. Throughout my career I have gained a wealth of experience covering a wide variety of legal fields, now concentrating in my chosen area of Family Law with a strong focus on Dispute Resolution.

My varied experience has enabled me to assist many clients in resolving their legal issues at an early stage. I deal with all aspects of family law including divorce, marital property disputes, parenting cases, parenting plans, de facto property matters, child support issues, spouse maintenance matters and Family Law financial agreements.

The early settlement of legal disputes is an emphasis of my approach to all matters. This is achieved by sensible negotiations, round table conferencing and the use of Interdisciplinary Collaborative Practice wherever possible so as to avoid the need to take matters to Court.

If, however court action becomes necessary, as an experienced and tenacious litigator, I will pursue my client's rights with skill and vigour.

I have appeared regularly in the Federal Circuit and Family Court of Australia, various Local Courts, the Sydney District Court and the NSW Supreme Court. I'm a member of the NSW Law Society, on the register of practitioners in the High Court of Australia and the Treasurer of Southern Sydney Collaborative Professionals Inc.

Fun Fact: I love to spend time with my beautiful grandchildren who bring so much fun and joy to my life. My other great loves are travelling, hiking and snow skiing. I've got to say its hard to fit it all in, but I certainly do my best!

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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

Why are you a lawyer?

I have been a lawyer now for over 40 years and although I have practiced over the years in most areas of law, family law is my driving passion. Early in my career, I recognised the need of people going through the trauma of family breakdown, for a holistic approach, to resolve the many issues that arise from these situations with genuine understanding and empathy. It is a great satisfaction to me to work alongside my family law clients on their journey to a better life.

HO HO HO - WISHING YOU A SHARING CHRISTMAS. TIPS FOR SEPARATED PARENTS

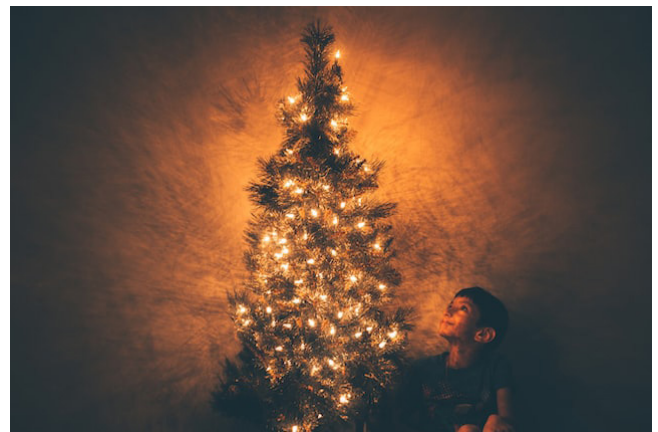
Christmas is a time to be jolly and merry. It is a time when families come together and share the magic and create memories. It can be a difficult time for children whose parents are separated. So many thoughts could be running through their minds, and they are likely to be feeling emotional and conflicted. It is given that both parents would want to spend time with their child/ren during Christmas. Things can be made easier if the parents are willing to think about what is best for their child/ren.

Here are some tips to ensure your Christmas is happy and Merry:

1. Communicate with the other parent and find out each other's plans for Christmas. Does either parent follow special traditions that you would like your child/ren to be involved in? Try to start these discussions as early as possible. It is a special time and parties can become sensitive and emotional wanting their child/ren to spend it with them. If you start the communication early, it will allow time for you to think clearly and for any disagreements to calm down.
2. Talk to your child/ren. It is equally important that you talk to your child/ren and find out what they want to do for Christmas. Do they have any specific wishes? Do they want to spend Christmas with one parent and Boxing Day with the other? Listen to what they have to say and try to find out why. Respect their wishes and let them know that whatever they decide, Santa will know where to drop the presents!
3. Be prepared to compromise. If you both want to spend Christmas Day with your child/ren or if your child/ren want to spend Christmas Day with both of you, then it might help to share Christmas Day so that one parent spends time with the child/ren from Christmas Eve to around midday or 1pm on Christmas Day and then the other parent spends time from midday or 1pm

on Christmas Day until end of Boxing day. If this is the case, consider the amount of travel that will be required - is it practical or will your child/ren be spending too much time travelling? If the answer is yes, then a compromise may need to be made that involves one parent not spending time on Christmas Day. Work out an arrangement that suits everyone and that allows you all to enjoy the special day, but most importantly your child/ren.

4. Stand united. Once an agreement has been reached, explain it to your child/ren together in a positive way and let them know that you are both happy with the arrangement and make sure they are too. Try to make the transition between the households as smooth and happy as possible.
5. It is ok to feel emotional. As parents you want to ensure you put your child/ren's best interests first and foremost and you want the environment to be positive and cheerful. It is understandable that you might be lonely and sad after changeover. Make sure you have organised plans with family and friends and have plenty of things to do during the festive season. Try to keep yourself busy.



Article written by Shweta Kumar | Photo by Jeswin Thomas on Unsplash

WILLS & BLENDED FAMILIES: SAFEGUARDING THE FAMILY HOME & SUPPORTING THE SURVIVING SPOUSE

In blended families, drafting a will involves crucial decisions to ensure both the surviving spouse and children from previous relationships are adequately provided for. This is particularly important when the family home is the primary asset, and there is a need to balance flexibility and security for the surviving spouse with the inheritance rights of children and other beneficiaries.

Granting a Right to Occupy

A common approach is to grant the surviving spouse a right to occupy the family home. This legal arrangement allows the surviving spouse to continue

living in the property after the first partner's death. It can also provide options to sell the property and purchase a new home or use the proceeds for accommodation bonds or retirement village entry fees.

Understanding the Right to Occupy

In situations where the home is owned as tenants in common, each partner holds a specific share in the property, this can be either 50 / 50 or in any other proportion which can be based on each party's contribution towards the purchase of the property. Partners may wish to leave their shares to their children while ensuring the surviving spouse can remain in the home. A right of occupation facilitates this balance.

Providing Flexibility for the Survivor

The right to occupy can be tailored to offer financial support to the surviving spouse. For instance, a will might direct the executor to invest any surplus from the property's sale, providing the survivor with income for life. Upon the survivor's death, beneficiaries receive their share of the property or its equivalent value. If aged care is needed, the deceased partner's share could be used as a loan for accommodation costs, repayable to the estate upon the survivor's death. Decisions should be made regarding whether the estate should bear any potential loss if an aged care bond is not fully refunded.

Conditions, such as entering a new relationship, can also be set to terminate the right of occupation, protecting the interests of all beneficiaries.

Addressing Mortgage and Insurance Considerations

Blended families often face complexities with mortgages on the family home. If the surviving spouse cannot manage mortgage payments alone, it may lead to financial hardship and a forced sale. Life insurance or mortgage protection insurance can prevent this, ensuring the surviving spouse is not burdened with repayments.

Balancing the Needs of Blended Families

Creating a will in a blended family requires careful consideration of the needs of the surviving spouse, children, and other beneficiaries. A simple right of occupation may not suffice, especially if no other financial provisions are made. Additional measures, such as monetary gifts or property funds using superannuation or life insurance, can ensure the surviving spouse has the resources for living expenses and home upkeep.

The Importance of Communication

Open communication between partners is vital to understanding each other's wishes and financial needs. Discussing options like insurance, property funds, and financial arrangements ensures the

survivor is supported without diminishing the legacy for children or other beneficiaries. Addressing these issues proactively can prevent costly estate litigation, reduce stress for the surviving spouse, and protect the estate's value.

While a right to occupy the family home offers security, it should be part of a broader estate plan that includes life insurance, superannuation, and other financial provisions to adequately support both the surviving spouse and the estate's beneficiaries.

At Solari & Stock, our Estate Planning lawyers can provide you with guidance and support to tailor your estate plan specifically to your family dynamics and needs.



Article by Valentina Abouzeid. | Photo by Kevin Delvecchio on Unsplash

IF THERE IS A DELAY TO MY BUILD, CAN I RECOVER DAMAGES FROM THE BUILDER?

In the context of building disputes, if you are a home owner and have engaged a builder to build a house, then the contract between you and the builder will likely have a completion date. What happens if the build is not completed by the agreed date?

As the owner of the land, you can make a claim for damages. Typically, the two types of damages you will be entitled to are either unliquidated damages or liquidated damages.

Liquidated damages

Liquidated damages are usually the pre-determined sum the parties agree to as a clause in the building contract prior to signing. For instance, the liquidated damages clause may state that the owner is entitled to \$50.00 a day, for each day that the builder is delayed in satisfying the completion date.

Liquidated damages are pre-determined amounts specified in a contract, payable upon a breach such as late completion of a project. These amounts are agreed upon by the parties at the time of contract formation, and are intended to represent

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IF THERE IS A DELAY TO MY BUILD, CAN I RECOVER DAMAGES FROM THE BUILDER? cont....



Photo created in Canva

a genuine pre-estimate of the loss that the non-breaching party would suffer due to the breach. The enforceability of liquidated damages depends on whether the stipulated sum is a genuine pre-estimate of loss or a penalty. If it is deemed a penalty, it will not be enforceable. Indicators that a sum is a penalty include it being out of proportion to the potential loss or being extravagant and unconscionable.

It is important to note that the liquidated damages specified by any term of a construction contract must be a genuine pre-estimate of the losses incurred. This is based on the notion that damages are compensation for losses that have been or would be incurred. Purported liquidated damages that are not reflective of a genuine pre-estimate of loss may be considered a penalty, which can be unenforceable. For instance, a sum of 'NIL' liquidated damages has been found by the Court

to be unenforceable and as such, the home owner is able to recover unliquidated damages from the builder.

Unliquidated damages

Unliquidated damages, on the other hand, are not pre-determined. They are assessed by the Court based on the actual loss suffered by the non-breaching party due to the breach. These damages are calculated according to common law principles, which consider the direct and foreseeable losses resulting from the breach. In building disputes, unliquidated damages might include costs directly resulting from the prolongation of the contract period, financial costs due to the delay and consequential losses (e.g. loss of rent).

The key difference lies in the method of determination: liquidated damages are specified in the contract and agreed upon in advance, while unliquidated damages are assessed by the Court based on the actual loss incurred. Additionally, liquidated damages must be a genuine pre-estimate of loss to be enforceable, whereas unliquidated damages are determined based on the actual impact of the breach.



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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