

Significant Changes to Family Law Act

Significant changes to the Family Law Act on 1 July 2006 are causing havoc in parenting disputes.

The amendments encourage "shared parenting" after separation and many parties interpret this to mean "equal time". This has led to a rise in parenting disputes as many fathers, in particular, are looking for shared care arrangements. These amendments also seem to have made it more difficult for parents wanting to relocate with their child to regions well away from the other parent.

We recently acted for a father in a matter where the mother relocated from the Macarthur district with the child to live near the NSW/Queensland border. She did this without the father's prior knowledge or consent. There were existing Court Orders in place which provided for the child to live with the mother and to spend time with the father after school each day and every second weekend. The father only found out about the relocation when the mother sent him a text message one Friday telling him that she and the child had now begun living at the new location. He made an appointment with our solicitor on the Monday and by Wednesday urgent documents had been prepared and filed with the Family Court seeking Orders for the return of the child to the local area or, alternatively, to have the child live with him permanently.

Just over a week later we had managed to have the matter listed for an urgent Interim Hearing at the Court and were successful in obtaining Orders that the child be returned by the mother to live with the father until November when a Final Hearing will take place.

The mother was criticised by the Court for the way in which she went about relocating without first having tried to negotiate new Court Orders, nor even having spoken to the father about the move.

By acting urgently, our solicitors were able to have the matter heard at Parramatta rather than in Brisbane and were able to avoid allowing the mother to have time to establish the child in a new school, with new friendships and with new living arrangements that might have made it difficult to change.

In another recent matter, our solicitors were able to assist a mother to relocate with her child from Queensland to the

Macarthur region. This was despite the fact that the mother had relocated without the father's consent, that the father opposed the relocation, that the father was legally represented and that the matter was heard in the Family Court at Brisbane.

By putting in a lot of time and effort and properly presenting the mother's case we were able to get the outcome at the Court Hearing that she had wanted.

Each case turns on its individual facts. If you are thinking about relocating with your child or children, you should exercise caution by getting professional advice before you take any steps. Parenting after separation is a serious and difficult business. Our expert Family Law Team can assist you with more information.

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GOVERNMENT ASSISTANCE FOR UNLAWFUL TERMINATIONS

The Federal Government has introduced the Unlawful Termination Assistance Scheme. This basically provides eligible people with a grant towards their legal costs up to the value of \$4,000.00 in the event they have a claim for unlawful termination.

Many people are aware that the Federal Government Work Choices Scheme has effectively removed the option of a claim for unfair dismissal for most employees. However, there are still grounds for a claim for unlawful dismissal e.g. temporary absence from work because of illness or injury, membership or non-membership of a Trade Union, race, colour, sex, sexual preference or absence because of work carrying out voluntary emergency management activity.

We are pleased to advise that Caldwell Martin Cox has been included in the Unlawful Termination Assistance Scheme. Any person who wishes to claim should initially make a claim with the Australian Industrial Relations Commission and obtain from them a Certificate and then apply to the Department of Work Place Relations for assistance. Of course if you do not meet the various tests set out by the Federal Government we are able to help you on a direct fee paying basis.

Please contact either Geoff Lloyd at our Camden or Natalie Cavaleri at our Narellan office if you require further assistance in this regard.

Geoff Lloyd

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The Partners and staff congratulate Debbie Tinsley of our Tahmoor office for successful completion of her Online Wills and Probate Course for Support Staff.

CAN'T READ - DON'T BE TOO PROUD!

Quite understandably, there are a lot of adults who hide the fact that they can't read or read properly. This may stem from a variety of reasons including dyslexia, poor education or where English is not their first language.

If this lack of capacity to read is hidden from your Solicitor, it can have serious consequences. The Evidence Act requires an affidavit to be read to a person who cannot read, and a special certificate placed on it to that effect by the Solicitor reading it.

In a recent Supreme Court case we were involved in, it became apparent the witness was having trouble reading some of the documents. After admitting he could not read, the Judge struck out all of his affidavit evidence, placing great pressure on his case. This could have easily been solved if the person had told their Solicitor of their problem.

Don't let "pride come before the fall."

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Getting ready to sell?

Then get your "legals" in order too!

The law now requires you to have a contract for sale available with your agent before your property can be offered for sale. You will need to see your solicitor to get this arranged beforehand.

This contract must include a copy of the following:

- title search
- deposited plan
- easements or covenants
- zoning certificate from Council
- sewer diagram
- smoke alarm statement

The more information you provide a purchaser, the quicker the exchange of contracts can be and, in this difficult market when properties aren't selling easily, making the sale process quicker and easier will ensure that any potential purchasers are in a position to commit quickly. To do this, we recommend that you also consider having copies of survey reports and Council building certificates available.

It is often worth a vendor's while to purchase a new survey report and to get Council to do a building inspection so the certificate can be attached to the contract. It is better to know of any problems before the property is sold, so that rectification costs can be included in your price.

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Your Business Structure



If you are contemplating going into a new business and/or setting up another business, it is important that you carefully consider the structure you proceed with to maximise the tax benefits. In many cases people tend to use a company structure as it offers a greater level of asset protection, however it may not be the most tax effective solution for you.

This will depend on your individual personal circumstances and here at Caldwell Martin Cox we offer legal advice for your protection and will work with you and your accountant to ensure you are protected and at the same time have the most beneficial tax structure.

It is extremely important that we work closely with your accountant as they understand your current tax position and can advise on the tax effectiveness of the various structural options that may be available to you.

Should you have any queries along these lines please contact Natalie Cavaleri at our Narellan Office or Chris Paul at our Camden Office for expert advice before you make a decision that locks you in.

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What is a Reverse Mortgage?

A reverse mortgage or equity release loan allows a home-owner to convert to ready cash, part of the equity locked up in their home.

It is ideal for people aged 60 or over who may be looking for a regular cash flow or lump sum payment to support their retirement.

What are the benefits?

- The money may be used for any personal expense or investment purpose
- Title remains in the home owner's name
- Money can be received in a lump sum or monthly payments, or both
- You don't have to make repayments until you die, sell or vacate the home

There are many variations with these loans and you need to seek independent legal advice to ensure your interests are fully protected if you are considering this new product.

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Saving \$\$\$\$ on family law sales or transfers

Previously we gave you some practical reasons why you shouldn't wait until after selling a property before dealing with family law property settlement.

You should also know that a well-structured family law property settlement BEFORE you sell can save you Capital Gains Tax on the transfer of an investment property and can save on Stamp Duty when a property is transferred from one party to another.

Your Family Home - If you and your spouse have separated and one person will be taking over the mortgage and buying out the other person, the home will need to be transferred into that person's name. Purchasers of properties in 'normal' circumstances usually incur stamp duty, but we will be able to assist you in applying for a stamp duty exemption from the Office of State Revenue at the time of the transfer.

This week we assisted a wife and her 2 adult children and son-in-law to "acquire" the family home from her husband. It was valued at \$880,000 and the children were buying in to help her keep it.

The stamp duty on the share being transferred might have been \$15,294 but none was payable. We even found a way to get around any stamp duty being paid by the son-in-law!

A massive saving due to well drafted orders.

Investment Properties - Many people own investment properties that need to be sold when a relationship ends - often incurring significant CGT liabilities. Last month we saved a client over \$12,000 in CGT again by putting a little thought into the drafting of their Settlement Orders.

Let us assist you in structuring your settlement in the most tax-effective way possible so that you and your spouse will each walk away with more in your pocket.

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What is a Testamentary Trust?

Basically, it is a trust contained within a Will. It is often referred to as "the tax effective Will" or "the Will that protects beneficiaries".

In a straight forward Will you leave your assets to a beneficiary(s), the beneficiary then invests the proceeds and pays tax on the income, as well as their normal income.

With a Testamentary Trust, the assets remain in the hands of the Trustee (who can also be a beneficiary). The Trustee invests the proceeds of the estate, and then has the

discretion to distribute the income amongst a number of beneficiaries, including infants (your children or grandchildren) who will pay tax at a far lower rate than an adult who has a full time job. There is an exemption in the tax law, to allow children who receive income via a Testamentary Trust, to be taxed at the normal adult rate.

It is easy to see how your family could save a considerable amount of tax by using a tax effective Will.

An additional benefit of the Testamentary Trust is to protect beneficiaries who may be susceptible to losing their inheritance because of bankruptcy, gambling problems, substance addiction or marriage break up because the inheritance is held by a Trustee and the beneficiaries entitlement is purely discretionary and the money remains safe whilst it remains in the Trust. Small amounts of income could be paid to the beneficiary whilst the danger remained.

Of course these Testamentary Trusts are only beneficial if there are sufficient funds in the estate that would allow enough income to be earned to create a tax problem.

Testamentary Trusts are very useful devices in the right circumstances. The minimum costs for these types of Wills are \$440.00 each.

Angus Cox

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Employment Agreements



The terms "anti-poaching" and "gardening leave" may sound as if they refer to life on a large English estate, but they are in fact terms now being commonly included by many Companies in Employment Agreements for executive staff.

'Anti-poaching' refers to restrictions on an ex-employee seeking to attract fellow employees of the company to join the ex-employee in new employment. 'Gardening leave' is a strategy utilised by employers who are prepared to pay a key employee to effectively do nothing, in return for keeping them from working for a competitor.

The law surrounding employment agreements grows ever more complex, as does life itself. We have experience in both preparing Employment Agreements for clients and also advising on and negotiating the terms of Agreements.

Contact Geoff Lloyd of our Camden Office or Natalie Cavaleri at our Narellan Office should you require further information regarding these matter.

Geoff Lloyd

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Who's where and what do they do?

Area of Law	Camden	Narellan	Picton	Tahmoor
Conveyancing	Chris Paul Lyn Harrison	Bill McGookin Natalie Cavaleri	Angus Cox Leanne Anderson	Belinda Dunkley
Estate Planning	Chris Paul	Bill McGookin	Angus Cox Jillaine Duve	Kristy Faida
Family Law	Caroline Holt	Bill McGookin	Jillaine Duve	Kristy Faida
Commercial Leases	Chris Paul	Natalie Cavaleri	Angus Cox Leanne Anderson	Belinda Dunkley
Leases & Sale and Purchase of Businesses	Chris Paul Caroline Holt	Natalie Cavaleri	Angus Cox Leanne Anderson	Belinda Dunkley
Court Matters /Damages	Caroline Holt Geoff Lloyd	Bill McGookin	Jillaine Duve	Kristy Faida
Criminal Law	Geoff Lloyd		Jillaine Duve	Kristy Faida
Debt Recovery	Caroline Holt Geoff Lloyd	Natalie Cavaleri	Jillaine Duve	Kristy Faida
Bankruptcy/Insolvency	Geoff Lloyd	Natalie Cavaleri		
Unfair Dismissal/ Employment Law	Chris Paul Geoff Lloyd	Natalie Cavaleri		
Family Provisions (challenging wills)	All enquiries to Angus Cox & Geoff Lloyd			
Personal Injury	All enquiries to Geoff Lloyd			
Workers Compensation	All enquiries to Geoff Lloyd			
Medical Negligence	All enquiries to Geoff Lloyd			

Our services include:

- wills and estate planning
- family law
- property law and conveyancing
- retail/commercial leases
- business law
- criminal law
- civil litigation
- employment law
- mediation and dispute resolution

Electronic Newsletters

If you would like to receive our newsletter by e-mail, please:-

Send an e-mail message to help@cmcox.com.au with the words "Newsletter" in the subject line, and provide your name and details in the message;

On receipt of your reply, we will delete your name from the "hard copy" mail list, and send you future newsletters by e-mail.



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