

Autumn 2004

Superannuation Splitting and Family Law

Whilst superannuation has always been taken into account in Family Law property division, the legislation did not empower the Court to make Orders actually dividing superannuation between a husband and a wife. This usually resulted in a division of property whereby the non-superannuated spouse received a greater share of the "hard assets" such as the home, cars or funds, in return for the superannuated spouse retaining their superannuation entitlements.

This all changed when long awaited amendments to the Family Law Act, 1975, came into operation on 28th December, 2002, allowing the Court to make orders effectively "splitting" or dividing superannuation entitlements. This power can assist a non-superannuated spouse by providing for their retirement or can assist a superannuated spouse by enabling them to hold onto some of the hard assets in return for dividing their superannuation. If divided the superannuation does not vest (cannot be received as cash) except when the person entitled to the benefits meets the funds criteria - usually by reaching a minimum age and retiring from work.

Superannuation in Family Law is complicated. There are many types of superannuation funds including accumulation funds (the most common) and defined benefit schemes. The procedures for "splitting" or "flagging" Orders varies depending upon the type of fund. For further information contact our **Accredited Specialist in Family Law**, Bill McGookin on 4647 8348.

Do we have a contract ?

For a contract to exist between two parties, it is often thought that there has to be some form of written agreement or at least a firm hand shake. This is not necessarily the case.

Where parties have commercial dealings between one another which are not properly recorded or indeed acknowledged, a contract may nevertheless be held to exist between them.

For more information or advice on contracts, contact Chris Paul at Caldwell Martin Cox on 4655 3077.

Guardianship

Let's hope you never fall victim to an illness or accident which renders you incapable of making sound personal decisions about matters such as where you live, medical treatment, and looking after your affairs.

If you do fall victim to an awful accident or illness, you can have peace of mind by appointing an Enduring Guardian to take care of your affairs and ensure your wishes are carried out, even if you are no longer able to do this for yourself. You can nominate a trusted family member or close friend as your Enduring Guardian.

Your guardian must be over eighteen years of age, and cannot be currently providing you with medical treatment or other professional services at the time of appointment.

Chris Paul, already a member of Narellan Rotary and the Bounty Business Group, has now been elected for a 2 year term as President of the Macarthur Law Society. Please feel free to contact Chris about any issues that may be relevant to Law Society business.



The greatest personal limitation is to be found not in the things you want to do and can't, but in the things you've never considered doing.

Richard Bandler

New law affecting Powers of Attorney

The new Powers of Attorney Act came into effect on 16th February 2004.

All Powers of Attorney made before that date are still legally valid. All new Powers of Attorney must be made under the new law.

The innovations of the new law are:

- the attorney must sign an acceptance of an enduring Power of Attorney before it is effective.
- it is possible to postpone the operation of the Power of Attorney for some future time.
- you must provide specific authority if your attorney is permitted to use your money for purposes other than for your benefit.
- you can still limit or make conditions of the use of the Power of Attorney.
- the solicitor must certify that you appeared to understand the effect of the Power of Attorney.

The new form makes it clear that a Power of Attorney is to be used for dealings with assets only, and cannot be used for health or lifestyle decisions. You should appoint a guardian for this purpose by means of an Appointment of Enduring Guardian.

We can assist you in all aspects of Powers of Attorney and Appointment of Enduring Guardian. If you'd like to know more, get in touch with Angus Cox at Caldwell Martin Cox on 4677 1292.

Our Unique Auction Service

Buying and selling property by auction is becoming more popular every day. It can be daunting for a buyer or a seller to be at an auction, without the benefit of legal assistance.

We have a new service now available. For a flat fee of \$250.00, we will:

- review an auction contract prior to the auction.
- negotiate changes to the contract prior to auction
- attend the auction with you to provide advice (limited to local area only)
- ensure the contracts are properly exchanged
- ensure the contract addresses all of the issues that have been agreed on by the parties.

Please call us to discuss this unique service offered by Caldwell Martin Cox. We believe it is great value to protect your biggest financial deal.

PLEASE HELP US KEEP OUR RECORDS UP-TO-DATE

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