

School holidays – an additional headache for parents

Keeping children entertained during school holidays is difficult enough, without the extra worry and angst of arguments with your former partner as to when the children are due to spend time with you both.

Considerable legal costs, emotion and time are often spent on resolving issues between parents as to the care arrangements for their children. It is not unusual at the end of the day for Orders to be made by the Court which include a general provision for the children to spend time with each parent for “half of each New South Wales school holiday period”. But what does that really mean? Which half and when? What actually is half?

Also, issues and disputes sometimes arise as to whether or not weekend and midweek visits by the children with one parent are to continue during school holiday periods.

It is very important that any care arrangements made between separated or divorced parents for their children are clearly expressed and well understood by both parents.

If those arrangements are to be included in a Parenting Plan or Consent Orders, provision for what is to actually take place during school holidays would be carefully and clearly detailed. The dates when the children are to spend time with each parent should be noted, together with the times for delivery and return of the children and particulars as to who is to be responsible for the transportation arrangements.

Generally, both parents agree that weekend and midweek visits should not take place during school holiday periods. However, this should be clearly understood by the parents and included in the Parenting Plan or Consent Orders.

Children benefit greatly from the attitudes and actions of parents who “get along”. Recording agreements reached between separated parents as to care arrangements for their children, including provision for school holidays, is often of great assistance to all concerned. However, it is important to properly record all the necessary details.

If you would like to discuss the benefits for your children and yourself of reaching an amicable agreement with your former partner and properly documenting that agreement, please contact our Family Law team for assistance.

Vicki Andrews

Associate Solicitor
Tel: 02 4655 3077
vicki@cmcox.com.au



Caldwell
Martin
Cox

Solicitors



Land Tax

If you own property within New South Wales then you may be liable for land tax. This is a tax levied on the owners of land in New South Wales, valued as at midnight on 31 December of each year.

In general, your principal place of residence (your home) and land used for primary production are exempt from land tax. However, you may be liable for land tax if you own (or part own) vacant land, a holiday home, investment properties or commercial properties, including factory shops and warehouses.

The land tax threshold for 2010 is \$376,000 and the tax is calculated on the combined value of all of the taxable land you own above this threshold.

If you own property other than your principal place of residence or primary production land and the combined value of this land is greater than the land tax threshold, you will need to register for land tax. If you don't pay the land tax due, or if you fail to register, there will be a large sum payable when you eventually sell or transfer the property.

We can assist you in attending to this so please contact Chris Paul, Law Society Accredited Specialist in Property Law, for help on how to register.

Chris Paul

Accredited Specialist Property/Partner
Tel: 02 4655 3077
chris@cmcox.com.au

Subject to an AVO – Beware!

Apprehended Violence Orders are becoming very common, particularly in domestic situations. They are usually made for a period of 6 to 12 months. They can prohibit a number of aspects of the defendant's life, including living at a certain premises, visiting the person in need of protection and associating with the person in need of protection within 12 hours of drinking alcohol.

It has come to our attention that, certainly in the Camden Local Area Command, Police are actively investigating persons subject to AVOs. We were recently involved in one case where the defendant was engaged in conduct in his own home that would normally have been quite lawful. However, because of the existence of the AVO, he was charged by the Police and subsequently spent a night in Police custody.

While our client was eventually able to be dealt with by the Court without any further time in custody, the lesson is clear: AVOs are Court Orders which place restrictions on people and can be enforced. It is also important to note that, if there is any allegation of violence in relation to a breach of an AVO, then the law says that the Court must sentence the offender to a term of imprisonment unless there are strong reasons why it should not.

Each of our offices can assist and advise in relation to AVOs.

Geoff Lloyd

Accredited Specialist Advocacy/Senior Associate
Tel: 02 4677 1292
geoff@cmcox.com.au

Congratulations to Angus Cox and Barbara Sleeman on each achieving 30 years at Caldwell Martin Cox

What do you know about Spousal Maintenance?

Spousal Maintenance payments are designed to provide short term financial assistance to a non-working spouse after a marriage separation. Since 1 March 2009, Spousal Maintenance has also been available in defacto relationship break-ups. It most commonly occurs in situations where the relationship has been lengthy and where one spouse has spent a significant period of time out of the paid workforce raising the children of the marriage or taking on a fulltime role as homemaker. That person can sometimes have difficulty in re-entering the workforce after separation and may need time to undertake further training or qualifications in order to start earning an income.

Parties can reach agreement that the working spouse provide assistance to the non-working spouse by way of weekly payments for a particular period, for example, 6 or 12 months. Or, if the parties are not able to reach agreement about Spousal Maintenance, then the non-working spouse can apply to the Family Court for an Order requiring the other party to provide the assistance. In determining these types of applications, the Court will look at: firstly, the non-working spouse's need for assistance; and, secondly, the working spouse's capacity to pay.

Time is of the essence in these situations and so, if you feel that you may qualify for Spousal Maintenance, it should be raised by your Solicitor with the other side very soon after separation. Contact any of our experienced Family Law team if you would like more advice about Spousal Maintenance.

Jillaine Duve

Senior Associate Solicitor
Tel: 02 4677 1292
jillaine@cmcox.com.au

How long is that disqualification?

If you know someone who has been charged with the offence of Driving While Suspended (including Driving While Cancelled and Driving While Disqualified) in the past year or 2, it may be worth their while checking the period of their licence disqualification.

Until a recent Court decision, there had been some confusion in New South Wales as to how a Court should treat a person who had been convicted of Driving While Suspended if they had also been convicted of a 'major driving offence' within the previous 5 years. This is because the legislation which

regulates these types of charges provides for two different disqualification periods depending on the circumstances: one is 12 months and the other is 2 years. As the higher penalty only applies where the offender has committed a 'second offence', confusion arose as to whether the original driving offence (regardless of the type of charge) was to be regarded as the 'first offence', or whether the offender had to have been convicted of the specific offence of Driving While Suspended in order for it to be invoked.

The good news for New South Wales drivers is that the Court of Criminal Appeal has recently ruled that only a prior conviction for Driving While Suspended (or Cancelled/Disqualified) is to be regarded as a prior offence for the purposes of the section. As a result, it is possible that there are many people in the community who may have received a 2 year licence disqualification in circumstances where they should only have been suspended for 12 months.

This is a complex area of law, so if you know someone in this category, it may be worth their while to make some enquiries as to whether the period can be reduced to 12 months. If you have any questions regarding a traffic matter, please contact either Geoff Lloyd at our Camden Office, Jillaine Duve at our Picton Office or Kristy Faida at our Tahmoor Office.

Geoff Lloyd

Accredited Specialist Advocacy/Senior Associate
Tel: 02 4677 1292
geoff@cmcox.com.au

CMC welcomes

Vicki Andrews has joined Caldwell Martin Cox as an Associate Solicitor in our Camden office. Vicki brings to the firm over 20 years of solid practical experience in Family Law, property and business transactions, Wills and estate planning. We are very excited to welcome Vicki on board.



We are happy to welcome Marie Lucas to the Caldwell Martin Cox team at our Camden office.

Why are Survey Reports important?

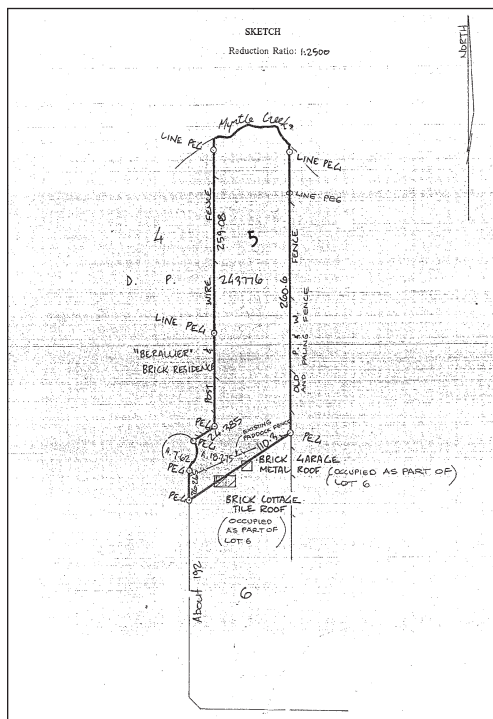
We recommend you get a Survey Report when you buy a house, for two main reasons:

1. To identify the property you are buying. The "legal address" of a property is the Lot number within a Deposited Plan. It's not the street number given by Council. Lots on a plan can all look alike and it's really only a Survey Report that can properly identify the house you are buying.
2. To make sure the buildings are not over, (or too close to), boundaries, or that the neighbouring house or shed does not encroach on your land.

We have learned over the years that fences cannot be taken as "gospel" for being on the correct boundary line. In the example below, the owner incorrectly thought the fence was the correct boundary and built their house accordingly. It turned out that the true boundary ran right through the house and the garage. When we found this out (by getting a Survey Report) the owner had to negotiate the purchase of the additional land from the true owner. A great deal of time and expense could have been saved if a Survey Report had been obtained at the right time, which is always "before exchanging contracts".

Leanne Anderson

Licensed Conveyancer
Tel: 02 4677 1292
leanne@cmcox.com.au



Home Owners Beware of your Duty of Care

If you've had maintenance work done on your home that you know wasn't completed properly (or if you've done the work yourself), you should be aware of a recent District Court judgment which found a home owner liable for substantial damages when something later went wrong. An electrician was working on a home in October 2004 when he was electrocuted and died after coming into contact with an exposed live wire. The wire was from a previously used solar hot water heater that had been removed by a plumber in 2001 at the direction of the home owner. It seems that a live supply of electricity remained connected to the old system and both men knew that.

The widow of the electrician sued both the owner of the home and the plumber for damages, and all parties agreed that she should be awarded \$350,000. Judge Levy found the owner of the home liable for 20% of those damages because he "was aware or ought to have been aware" of the live electricity supply. This equated to a payment of \$70,000 to the widow of the electrician. The plumber was found liable for 80% of the damages (or about \$280,000).

Judge Levy found that it had been "reasonably foreseeable" to both men that the electrocution could have occurred in the way that it did. As such, each man had breached his duty of care to the electrician.

This is a salient lesson in the importance of ensuring that all work of this type completed around your home is done to a professional standard. If you would like legal advice on your duty of care, please contact Geoff Lloyd, Accredited Specialist in Advocacy, at our Camden office.

Jillaine Duve

Senior Associate Solicitor
Tel: 02 4677 1292
jillaine@cmcox.com.au

What our clients are saying:

"I was kept informed at all times. Any concerns were attended to immediately."

"The staff at the Tahmoor office were great. They made things easy for me during a very stressful time in my life. Thanks again."

"Fantastic people. Nothing was too difficult, everything was told to us in plain talk. We would still be wondering what to do if it had not been for Angus. Thank you very much."

Winter 2010

Who's where and what do they do?

Area of Law	Camden	Narellan	Picton	Tahmoor
Conveyancing	Chris Paul	Bill McGookin	Angus Cox Leanne Anderson	Kristy Faida
Estate Planning	Chris Paul Vicki Andrews	Bill McGookin Chanda Poch	Angus Cox Jillaine Duve	Kristy Faida
Family Law	Vicki Andrews	Bill McGookin	Jillaine Duve	
Commercial Leases	Chris Paul		Angus Cox Belinda Dunkley Leanne Anderson	
Leases, Sale and Purchase of Businesses	Chris Paul		Angus Cox Belinda Dunkley Leanne Anderson	
Court Matters/Damages	Geoff Lloyd Chanda Poch		Jillaine Duve	
Criminal Law	Geoff Lloyd Chanda Poch		Jillaine Duve	
Debt Recovery	Geoff Lloyd Chanda Poch			
Bankruptcy/Insolvency	Geoff Lloyd			
Unfair Dismissal/ Employment Law	Geoff Lloyd			
Family Provisions (challenging wills)	Angus Cox			
Personal Injury	Geoff Lloyd			
Workers Compensation	Geoff Lloyd			
Medical Negligence	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 either:

- 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, or
- subscribe via the "Reading Room" on our website www.cmcox.com.au



■ 28 Hill Street,
CAMDEN NSW 2570
Tel 02 4655 3077 Fax 02 4655 3227

■ 20 Menangle Street West,
PICTON NSW 2571
Tel 02 4677 1292 Fax 02 4677 1442

■ 129 Remembrance Drive,
TAHMOOR NSW 2573
Tel 02 4681 9203 Fax 02 4683 1156

■ Suite 3, Level 1, 320 Camden Valley Way,
NARELLAN NSW 2567
Tel 02 4647 8348 Fax 02 4646 1595

Email: help@cmcox.com.au

Website: www.cmcox.com.au

Liability limited by a scheme approved under Professional Standards Legislation.

This publication has been prepared for the purpose of quick information dissemination to Caldwell Martin Cox clients. Its contents should not be used as a basis for advice or formulating decisions.