

SOLARI & STOCK

LAWYERS

NEWSLETTER

December 2010

UPCOMING SEMINAR IN FEBRUARY 2011

We will be holding a seminar in February 2011 regarding new laws coming into effect in May 2011 which will have a wide ranging impact on people and businesses when buying and selling goods (not real estate) and services.

Further details will be provided in the New Year by mail and posted on our website.

As this Seminar will be popular please contact Kerry at our office now to secure your seat.

Priority will be given to those who book early

Don't be a "Nigel" (the £56,000,000 lottery winner ordered to pay his ex-wife of 10 years a slice of his winnings)

Many of you may have read the recent news story of Nigel Page who won £56,000,000 in the Euro Millions Jackpot this year. He was ordered to pay his ex-wife who left him for another man 10 years ago and taking their three year old daughter with her, £2,000,000 from his winnings, as well as a huge increase in child support payments for their daughter. When the parties separated, Mrs Page having left Nigel for another man, Nigel remained in the home and bought out his wife's share of the house and paid regular child support payments to her. However, when Mrs Page discovered that Nigel had won the lottery she consulted lawyers and commenced Court proceedings for another slice of his wealth. On legal advice Nigel apparently settled the matter rather than face the prospect of a larger payout to his ex-wife if the case had gone to a Court Hearing.

The case of Nigel's misfortune is a telling example of the need to ensure that, upon separation, parties obtain good legal advice and ensure that a legally binding property settlement is effected to divide their assets and to ensure that no future claim can be made against either party irrespective of future circumstances. If Nigel had obtained a property settlement, by

way of a Court Order or a Binding Financial Agreement, then his ex-wife would have had no claim whatsoever against his lottery fortune.

Don't be a "Nigel" if the misfortune of a family breakdown occurs. Obtain good legal advice without delay to protect your future.

Top 5 Tips for Landlords of Commercial Premises

1. Select the right tenant. The initial interview is important and you will have many questions depending on your unique situation. There may be legal restrictions placed on your ability to ask questions so you may want to review your interview game plan with your legal advisor. Credit worthiness of your prospective tenant is essential so ensure that references are obtained and checked. If you are renting to a company then you will need to consider personal guarantees from the directors and/or a significant security payment up front.
2. Ensure you have a well drafted lease. It is imperative that your lease protects your interests. Many essential matters need to be properly covered. For example in acting for a tenant recently we came across a poorly prepared lease which meant that our client was able to take advantage of a rent review provision which we believe will save our client over \$40,000 each year over the next 5

year term. When that occurs the landlord, we are sure, won't be impressed with the lease his solicitor prepared. This costly error could easily have been avoided if the solicitor was experienced in this area of law.

3. Pick your managing agent carefully. If you do not have the time or expertise to personally manage your rental properties, you will need to hire a managing agent with a proven history in the field.
4. Get insured. Make sure that you have a proper amount of rental insurance, property liability insurance and any other type of insurance that may be required in your circumstances. Ensure that the tenant, if responsible for insurances, complies with his responsibilities throughout the term of your lease so that you are not exposed to any unnecessary risk.
5. Deal with any tenant complaints or issues quickly and efficiently. Unresolved issues often result in damaging the relationship between landlord and tenant or unnecessary legal action being taken involving parties in expense which could have been avoided at the outset. Similarly, if the tenant fails to comply with any term of the lease, such as late rental payments, firm and decisive action should be taken immediately to address the situation to minimise any loss that

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.

Office: Suite 5 Ground Floor
522 Kingsway (Cnr Jackson Ave)
MIRANDA NSW 2228
Mail To: PO Box 358 MIRANDA 1490
Parking access via Gurrier Avenue

Tel: (02) 9540 4111
Fax: (02) 9540 4277
Email: law@solariandstock.com.au
Website: www.solariandstock.com.au



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may be sustained and to encourage prompt future payment. A timely and well drafted letter from your solicitor could save you a lot of heartache in the long run.

A Small Feat: Parental Leave & Small Businesses

The Australian Government has introduced a comprehensive Paid Parental Leave (PPL) scheme for parents who are the primary carers of a child born or adopted on or after 1 January 2011.

Under the scheme, an eligible person will receive taxable PPL payments at the Federal Minimum Wage Rate (currently \$543.78 per week) for a maximum period of 18 weeks. Parents are able to lodge PPL claims from 1 October 2010.

If you need more detailed advice as an employee or an employer about the PPL scheme please contact us.

Beware of DIY Will Kits and "Free" Wills

Although Do-It-Yourself Will Kits may seem like a good idea when you first buy them and make you feel that your affairs will be in order once you pass away, the real issues do not usually arise until after you pass away.

A Will must in most circumstances conform to strict legal requirements. If the requirements are not met the Will may be invalid. This then means that your assets would be distributed according to a pre-determined formula set up by the Government and may well not be as you intended.

A Will needs to contain precise wording and terminology and the ordinary meaning of a word is not necessarily the same as its legal meaning. Ambiguous wording is extremely common in home made or DIY Wills

and may result in substantial cost and delay in having the Supreme Court resolving those issues.

A Will is an important legal document. It is therefore advisable to have your Will professionally drafted and ensure your wishes are properly recorded and carried out.

Another thing to be careful of is the promise of a "Free" Will. The NSW Trustee and Guardian ("Public Trustee") usually advertises that a Will prepared by its office is "free". What people do not always realise is that the Public Trustee requires the Will to appoint the Public Trustee as the Executor. The Public Trustee charges your estate an executor's commission which is up to 4.4% of the value of your entire estate. This is in addition to the normal legal costs associated with an application for Probate. This of course can be a significant amount! Further, where the estate is being administered over a number of years (e.g. where there are child beneficiaries) the Public Trustee charges further fees throughout that whole period of time.

If you have a Will that has been prepared using a DIY Will Kit or by the Public Trustee, please consider having it reviewed by one of our solicitors. We will advise you and ensure that your will meets your wishes and needs, complies with all legal requirements and that your beneficiaries receive the best outcome possible. When you pass away it will be traumatic for your family. Don't add to the trauma by leaving problems that a professionally prepared Will would avoid.

Drink Driving and Demerit Points

With the holidays fast approaching and the police presence on our roads increased, many people will be caught drink driving or incur demerit points in

respect of other matters which could jeopardise their licence.

One of the big myths is that offenders can ask the Court for a "work licence". This is untrue. There is no such thing as a "work licence".

If you incur too many demerit points you may be able to appeal your licence suspension.

Drink driving offences result in automatic licence suspension terms, with the Court only able to reduce the suspension to the minimum suspension or if very lucky give you what is known as a "Section 10". This gives the court the discretion to find a person guilty of an offence, but nevertheless discharge that person without entering a conviction. A major benefit of Section 10 is that it means that first-time offenders will not be left with a criminal record, and there is no loss of a driver's license or any other penalty imposed for the offence

If you are caught with low range alcohol content you are looking at a 6 month automatic licence suspension or a 3 month minimum licence suspension. As each range increases so does the suspension period, with high range drink driving having an automatic suspension of 3 years and a minimum suspension of 12 months.

A new change which has only just been ratified by the State Government is the reducing of demerit points in respect of some offences and the increase in the amount of demerit points able to be incurred for some drivers. Unfortunately at the time of printing this newsletter the State Government has not released a detailed accessible list but we hope that this should be accessible soon. You should check the RTA website for any updates or contact us to advise you as to how the changes may impact on you.



The Partners and Staff wish you the compliments of the season and advise that our office will close Thursday 23 December 2010 at 5 pm and re-open Tuesday 4 January 2011 at 9 am.

The team at SOLARI & STOCK:

Lawyers: Michael Solari
Riccarda Stock
Johnathan Neofytou
Tina Stivactas
Amy Jenkins
Adam Torok

Secretaries: Kayla Peoples
Robyn Rostron
Zoey Elshab
Kate Frankland
Melinda Jesney

Practice Manager: Saskia McCann
Reception: Kerry Timms