

### FREE SEMINAR

Topic **LEGAL STRUCTURES - SOLE TRADER, PARTNERSHIP, COMPANIES & TRUSTS.  
WHAT ARE THEY AND WHEN ARE THEY APPROPRIATE ?**

When **6.30 pm on Tuesday 29 June 2010 @ Hazelhurst Art Gallery, Kingsway, Gymea**

Speaker **MICHAEL SOLARI** (our Commercial Law Partner)

**RSVP** Wednesday 23 June 2010

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*Seats are strictly limited - finger food and refreshments will be provided after the Seminar*

Solari & Stock extend an open invitation to you, your family and friends to the above Free Seminar.

It is a complicated issue for people as to what structures should be used to buy assets or conduct businesses.

The common forms of structures are sole trader, partnership, companies, discretionary trust and unit trust. Also, there is superannuation and testamentary trusts (included in Wills).

Our commercial law partner, Michael Solari, will identify some of the pros and cons of the various structures. With all of these different structures there are benefits and disadvantages.

It is a question of selecting the right structure or structures (and perhaps a combination) to suit your needs.

Also, discussion will take place in relation to ways in which these structures can be used to best protect assets (for example splitting business assets so that any real estate and intellectual property are kept separate from any trading entity).

We look forward to seeing you on the night.

### THE FAMILY HOME & CAPITAL GAINS TAX

Issues can arise if you buy a house and delay moving in. The Australian Taxation Office has applied a strict interpretation to the rules that cover exemptions from Capital Gains Tax on a person's principal residence. Most people know that their principal place of residence is exempt from Capital Gains Tax on its sale. However, in many cases people purchase their house and then rent it out for a period of time before moving in, for example because of work commitments, retirement planning or financial need. If the house is rented out the exemption will not apply during the rental periods. To qualify for the full exemption from Capital Gains Tax the law says that the taxpayer must take up residence as soon as practicable after purchase. It is the expression "as soon as practicable" that has led to disputes between home owners and the tax office.

In a recent case a taxpayer and his wife purchased a home in Wauchope with the intention that they would be moving into the home shortly after its purchase. They purchased the property in 2001 and were not able to move into it until

2004. When they sold the property in 2006 they did not report any of the capital gain in their tax returns for that year. The following year the ATO issued notices of amended assessment to them including taxable gains on the sale of the home. The taxpayers appealed the decision on the basis that during the period of time it was rented out it was always their intention to live in the home but they had been unable to do so due to work commitments requiring them to live elsewhere. The tribunal decision was in favour of the ATO. The amount of tax payable was calculated by determining the proportion of the time that they owned the property in which they didn't live in it compared to the whole of the time they owned the property and then applied that proportion to the increase in value (Capital Gain) to determine the taxable capital gain.

### NSW GOVERNMENT PASSES LEGISLATION TO SET UP RELATIONSHIPS REGISTER

On Wednesday 12 May 2010 the NSW Parliament passed legislation to create a Relationships Register making it easier for unmarried couples to access legal

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entitlements and prove they are in committed or de facto relationships.

The Attorney General, Hon. John Hatzistergos MLC said "Previous laws made it difficult for couples who are in de facto or committed relationships to prove their relationship for the purpose of accessing government services, entitlements or records."

"The register ensures NSW is aligned with Commonwealth Government moves to remove discrimination against unmarried people in heterosexual and same sex relationships" he said.

"Couples who choose to register their relationship will now be provided with one document that helps prove their relationship and will be spared the frustration of constantly having to supply agencies with large amounts of paperwork."

To be eligible to register a relationship on the Relationships Register:

- Couples must be in a committed, exclusive relationship;
- Couples must not be married or in another relationship that is registered or registrable;
- Couples must be 18 years of age or older; and
- One person must be a resident of NSW.

The Register will be managed by NSW Registry of Births Deaths & Marriages. It will be up and running in the next few months.

## **WORKPLACE BULLYING & EMPLOYER LIABILITY**

Workplace bullying has begun to be exposed as a real problem for both employees and employers.

The team at **SOLARI & STOCK:**

**Lawyers:** Michael Solari  
Johnathan Neofytou  
Tina Stivactas

Riccarda Stock  
Linda Gabel  
Amy Jenkins

**Secretaries:** Robyn Rostron  
Zoey Elshab  
Melinda Jesney

Kayla Peoples  
Kate Frankland

**Manager:** Saskia McCann  
**Reception:** Kerry Timms

In a recent case the owner and 3 employees of a café in Victoria were convicted and fined for failing to take reasonable care for the health and safety of an employee who it was found had been driven to commit suicide as a result of significant physical and emotional bullying that had occurred in her workplace.

Workplace bullying may be considered to be discrimination if it is done on the basis of a protected attribute (such as sex, race or disability). It may also be considered sexual harassment which is also prohibited.

An employer may be liable for the behaviour of their employees unless it can be shown that reasonable precautions were taken by the employer to prevent it. The Courts have found that an employer owes a duty of care to exercise reasonable care for employees' safety including the provision of a safe place of work and a safe system of work and this has been held to include protecting employees from racial or personal vilification, harassment or bullying. A failure to do so can result in a breach of the Occupational Health & Safety laws.

Some employers do the right thing and have a policy on bullying in the workplace. However, where an employer does have such a policy they need to be aware that the policy may be considered to be part of the employment contract and therefore it has to be followed. A failure to do so may amount to a breach of the employment contract.

It is difficult for employers to know everything that goes on in the workplace. If an employee, however, complains of bullying it is crucial that employers take this seriously and conduct an investigation into reported incidents. It is also important for employers to have comprehensive policies on bullying to set the culture in the workplace as one that has a zero tolerance for abusive behavior. These

policies, however, need to be carefully drafted.

If you require any specific legal advice or assistance in relation to matters such as these please feel free to contact our office.

## **UNDERGROUND FUEL STORAGE TANKS**

Owners of properties with underground fuel storage tanks should be wary as the government has introduced legislation in respect of reports required for such tanks and also for their monitoring.

The legislation states that if you are using a storage facility for fuel there are certain things that must be in place.

"Using" includes allowing petrol to remain in the tanks.

If the tanks are in use then the owner must have an Environment Protection Plan in place.

As well as having the Environment Protection Plan you must set up ground water monitoring wells around the tanks. This regulation applies for all storage tanks, except for tanks which are considered old storage tanks and this is required for the old storage tanks from 1 June 2011.

Old storage tanks are any tanks that were consented to under the Environmental Planning & Assessment Act 1979 before 1 June 2008, lawfully installed before 1 June 2008 or commissioned before 1 June 2008.

Further, you are also not to use the storage tanks unless the measuring instruments are checked and all data sourced from them is recorded. The maximum penalties for non compliance or breaches of these regulations are \$22,000 for individuals or \$44,000 for corporations.