

"Success Together"

Welcome

We hope you are all weathering the global financial crisis and the various recent budgets and can see a light at the end of the tunnel. Our firm is still seeing strong demand in conveyancing, especially by first home buyers, and regular new work in the commercial/business arena so it seems consumer and business confidence remains at reasonable levels. Hopefully this will lead us through to recovery.

Office update – six months on!

Staff

Leo Shih left the firm at Easter to further his fulltime studies and undertake his Masters. We thank him for his efforts over the past 14 months and wish him well.

Car Parking

We are pleased to inform you that following the installation of an intercom system in the Hyper Centre we are now able to offer you the convenience of two undercover car park spaces when attending our office. Please click on the link below for more details or copy and paste into your browser:

www.oneillslawyers.com.au/contact-us.php

Legislation update

Duties Act - Stamp Duty Reduction

The recent State budget abolished stamp duty for vacant land up to the value of \$250,000 for first home buyers hopefully making it more affordable.

Body Corporate and Community Title Act

An amending Bill was urgently introduced by the State government to overcome the recent QCA decision in *Bossichix Pty Ltd v Martinek Holdings Pty Ltd* which allowed a buyer to get out of the "off the plan" contract on a technical point of law which the Act never intended to allow. The Contract did not strictly comply with S 212 of the Act as it did not use the exact wording in the Act.

Business Law

Click on the link below to read our special Business Alert on relevant issues:

www.oneillslawyers.com.au/articles.php

National Regulation in Consumer Credit Contracts – are you being treated unfairly?

A national consumer policy framework is being proposed to deal with unfair contractual terms which will be deemed as void in certain cases. It applies to terms that cause "significant imbalances in the parties' right and obligations under the contract" which are "not necessary to protect the supplier's interest".

Early Termination or Break Fees for mortgages are a current, hotly disputed issue with many borrowers seeking to refinance where they now find their fixed rate interest loans are much higher than the market.

The new policy weighs up any significant imbalance between the consumer's detriment and the loss suffered by the lender due to early termination. The intended legislation is expected to commence on 1 January 2010.

Repossessions under Queensland Mortgages

Due to the economic crisis, the State Government has legislated in respect of certain prescribed mortgages being those that are over a principal place of residence to ensure that mortgagees exercising their power of sale do so in a fair manner. The mortgagee, amongst other obligations, has "to take reasonable care to ensure that the property is sold at the market value" and has the duty to act in good faith.

Cheating Partner – be prepared for the 'Mistress Law'

From 1 March 2009, the Family Law Amendment, dubbed the 'Mistress Law', means married and de facto couples are now treated the same so cheating de facto partners are open to divorce-style litigation.

The law allows a de facto who satisfies the basic criteria, to claim against the cheating partner's income, property and even superannuation fund. This means a party may face a claim by both the spouse and the "de facto" if both relationships break down. The amendment also aims to remove same-sex discrimination from the Family Court system leaving all couples treated equally under the law.

Please ring Kathleen Dare of our office for advice.

Child Support Assessments

From 1 July the definition of "income" used by the Child Support Agency to calculate child support assessments is expanded to catch salary- sacrificed superannuation contributions and net losses from financial investments as part of a parent's adjusted taxable income for child support purposes thereby ensuring more accurate assessments for parents.

Queensland Civil and Administrative Tribunal

This new Tribunal will amalgamate the jurisdiction of about 26 government bodies and tribunals in to a single independent efficient and accessible tribunal hopefully by 1 December 2009. It aims to save public confusion over which Tribunal should hear a matter and save \$80M for the government.

Federal Magistrates' Court to disappear!

On 5 May 2009 the Rudd Government announced it will restructure the federal courts system by merging the Federal Magistrates Court into the Family Court and Federal Court, consolidating all family law matters under the Family Court and consolidating all general federal law matters under the Federal Court.

Quotable quotes

The future is not a place to which we are going. It is a place we are creating. The paths to it are not found but made, and the activity of making them changes both the maker and the destination.

Anon

About the time we can make the ends meet, somebody moves the ends.

Herbert Hoover

And while the law of competition may be sometimes hard for the individual, it is best for the race, because it ensures the survival of the fittest in every department.

Andrew Carnegie

All lasting business is built on friendship.

Alfred A. Montapert

Case update

Disputed Wills and Costs Orders – the goal posts have moved!

The practice for many years was that a party who brought a claim for family provision under the Succession Act would have their costs paid from the estate. However the courts are now more likely to make the applicant pay some or all of their own costs if they unreasonably refuse to accept an offer made by the other parties.

A Supreme Court decision Daley v Barton 12/08 was an instance in which the courts made several orders in relation to costs which effectively punished the claimant for refusing to accept the offer. A party cannot blindly continue a claim without taking this into account.

The rule in Saunders v Vautier (1841) 4Beav115 – beneficiaries right to a transfer

Under a Will an adult beneficiary who has a vested and indefeasible (undeniable) interest in property may require the transfer of the property to him or her even where the Will states that the beneficiary must wait until a certain age.

If the interest is dependent upon a contingency which may or may not occur the interest is a contingent interest and therefore does not vest upon the beneficiary and therefore must continue to be held upon trust for them. It is therefore very important that the correct wording is used as to your intentions under a Will.

Wills – Why don't I have one?

Many Australians have never made a Will. Numerous surveys have been done as to the numbers (generally about 40% to 50% don't) but not the reasons why. We thought we would conduct our own mini-survey to see if there are common reasons or fears, which we might address for you.

We appreciate you taking 30 seconds of your time (really, that's all it will take) by clicking on the link below to take you directly to the survey form which you can then email back to us.

The first six people who send back the completed survey will each win an Italian-made PortaBook (a portable health-improving ergonomic stand to rest your laptop, magazine, cookbook etc) valued at \$40.

www.oneillslawyers.com.au/survey-wills.php

CPI March Quarter

Australia's consumer price index rose 0.1% in the March quarter for an annual increase of 2.5% well within the Reserve's target.

Please contact our office if you need advice on any matter.

FEEDBACK: We welcome your comments on our Newsletter and its contents. Is it useful? What sort of information would you like to see included/excluded? We also welcome comments on our quality of service and ways to improve it.

IMPORTANT NOTICE: This is not advice and clients should not act solely on the basis of information herein, which constitutes general comments on various legal and commercial issues. Clients should consult the appropriate advisors before acting upon any matter herein.

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