

# Newsletter

## Review of **Your Will**

We all spend such a great deal of time just managing our day-to-day affairs and engaging in business activities, that we often don't give any thought to the extent of the assets we have accumulated and what might happen to them if we die.

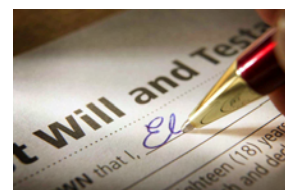
To ensure assets are transferred to those you would like to benefit, it is critical to make a Will. But, more importantly, if you have made a will, it is prudent to review it on a regular basis.

The following are some points to consider in such a review –

- Are your executors still alive and, if so, are they people capable of collecting, maintaining and protecting the estate assets pending their final distribution to the beneficiaries? Are they the appropriate people to oppose any claims that may be made against your estate? If you have business structures, do they understand them? If you have appointed more than one executor, are co-executors all in the same jurisdiction as your estate assets and do they have a good working relationship with each other?

- Are all your beneficiaries still alive and are they the people that you still intend to benefit in your estate?
- Do you have people in your life other than your children who are important to you and who you wish to make some provision for in your Will?
- Have you accumulated valuable assets and do you have complex business structures, the control of which needs to pass to the most relevant and appropriate person on your death? Do the present provisions of your Will accommodate present tax arrangements that you have?
- Have you divorced or remarried since making your last Will? If so, it could be possible that your Will, or some provisions of it, has been revoked.
- Have you thought about what will happen to your superannuation benefits on your death and if this needs to be accommodated in the provisions of your will?
- Has your will been appropriately signed and witnessed?
- Do you know where your original Will is kept? Do your Executors know?

Your Will should be reviewed every few years to ensure that it is relevant to your current situation. If you find that you need to make some amendments or make a new Will after a review, then Judy Smith at Smith & Stanton would be more than happy to speak with you. Of course if you have not made a Will then an appointment with Judy is well overdue!



## Residential Real Estate Contracts

### The Unintended Effect Of Consumer Protection Laws

#### Warning Statement

Under the Property and Motor Dealers Act (PAMDA) which came into force in July 2001, it is now necessary to include a warning statement in all residential real estate contracts. The warning draws the buyer's attention to a number of important matters, including the buyer's right to terminate a contract during a 5 day cooling off period.

Since 2001, PAMDA has been amended on a number of occasions to impose strict rules upon selling agents concerning the way in which contracts must be presented to buyers. The primary objective is to ensure that the buyers are fully aware of their consumer rights, including the cooling off rights, which are set out in the warning statement.

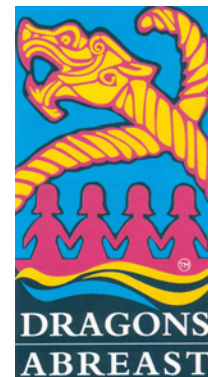
#### Complex Regulations

As a result there is now strict regulation of procedural matters involving the formation of residential real estate contracts. Some examples are –

- The warning statement must be inserted as the first page of the contract. The buyer must sign the warning statement before signing the contract. If this does not occur, the buyer may terminate the contract at any time before settlement.
- The contract is formed when it is counter signed by the seller. After the seller counter-signs, the contract is forwarded to the buyer or the buyer's lawyer, usually in the mail. The real estate agent (or seller's lawyer) must again draw the buyer's attention to the warning statement attached to the contract (even though the buyer has already acknowledged, by signing the warning statement that it exists.) If this is not done, the buyer can terminate the contract at any time before settlement.
- In the case of a house or residential land contract, the warning statement must be affixed to the contract. No other document can be attached to those documents. If those documents are posted to a buyer or a buyer's lawyer, and the agent attaches a letter to the front of those documents, this is considered a breach of PAMDA allowing the buyer to terminate the contract at any time before settlement.

#### War Story

Recently, a buyer of residential real estate sought our advice on terminating an unconditional contract. The buyer had simply lost confidence in the property. We noticed that, when the contracts had been forwarded to the buyer by the seller's lawyer, the introductory letter did not draw the buyer's attention to the warning statement on the front of the contract. In addition, the selling agent – as a service to the buyer – had bound some helpful information on the property between the warning statement and the contract. Under PAMDA, the buyer had not one, but two grounds to terminate the contract and subsequently did so. The buyer received a refund of his deposit.



### Dragons Abreast

Dragons Abreast is an organisation that promotes breast cancer awareness and education whilst demonstrating that people can fully participate in life despite any physical limitations as a result of the treatment for breast cancer. Since 1998, Dragons Abreast has participated in international, national, state and local dragon boat regattas. Their teams are fiercely competitive and the organisation has been very effective in raising awareness of breast cancer.

For the past three years, Smith & Stanton, through Bruce Smith, has provided pro bono legal work for the Queensland and national organisation. Bruce believes that Dragons Abreast do fantastic work in assisting women through a difficult period in their lives and he has felt privileged to be able to help such a positive and worthwhile organisation.

## Keeping an eye on the Banks...

### Consumer protection continues

When it comes to lending, particularly consumer lending (for private purposes), there has been a strong emphasis in recent years, particularly since the commencement of the Consumer Credit Code, on regulating the conduct of lending institutions and ensuring that consumer's rights are protected.

The introduction of the Code has meant that banks must abide by strict rules and regulations in making offers of loans to consumers, including making full disclosure of all pertinent information and ensuring that consumers are provided with copies of the documents they are signing.

Further, lenders are required to publish comparison rate schedules for typical retail fixed-term loan products, for example, car loans. You will often see these comparison schedules published in the newspaper, wherever the lender places an advertisement for their current interest rates. This requirement on lenders was initially subject to a three-year "trial" period, which was to expire on 30 June 2006.

The Uniform Consumer Credit Code Management Committee was asked to assess whether there had been a benefit to the community in order to decide whether the regulation should continue past 30 June 2006. Based on data obtained by early 2006, there was some uncertainty as to whether such benefit to the community had been achieved. One thing that came out of the assessment, however, is that there is a need for an increased emphasis on consumer education and funding for enforcement of the Code.

The Committee formed the view that the full results of their assessment would not be available in time to end the trial period on 30 June 2006. Therefore, an extension of the regulation is now in place, and this means that the mandatory comparison rates regime is to remain in place until 30 June 2007 – which is something to bear in mind when looking at lender's interest rates for loans.



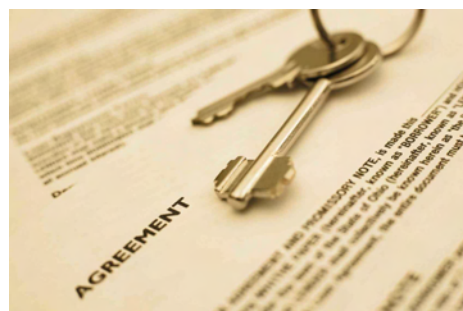
## Default interest rates – a timely reminder to banks

In a recent case against a lender (in the realm of commercial lending) the lender was given a timely reminder by the Court that they are to abide by general commercial contractual principles when setting their default interest rates.

The outcome of the decision means that a bank's "default interest" provision will only be enforceable where the rate (or the formula set out to calculate the rate) is fixed or can be fixed based on a benchmark or objective standard and will not be enforceable where the provision allows the bank to set the default rate entirely at its discretion.

A poorly drafted provision may result in the bank not being able to recover any default interest at all. For commercial clients, this highlights the need to ensure that you properly read and understand your loan agreements, especially before paying any additional interest or fees to the bank.

*If you have any queries in respect of any documents you are provided by your bank, whether in the area of personal or commercial lending, please do not hesitate to contact Smith & Stanton to assist you.*



*“people you can talk to”*

**S M I T H & S T A N T O N**  
LAWYERS

## For The Youth

### Graffiti

It is an offence to put graffiti on anything which does not belong to you unless you have permission of the owner to do so. If the property being damaged or destroyed is in a public place or it is visible from a public place and is caused by spraying, marking, drawing or applying paint (this is called "tagging"), the offender could be charged under the Criminal Code.

### Marriage

You can get married without your parents' permission when you turn 18 years of age. If you are over 16 years, you may be able to get married if you have your parents' permission.

### Tattoos

It is illegal to tattoo someone who is under 18 years old.



## QPILCH

QPILCH, the Queensland Public Interest Clearing House, is a non-profit community based legal organisation that co-ordinates the provision of pro bono legal services in public interest matters for individuals and community groups. The service can refer community organisations or persons with a legal problem to law firms and barristers for pro bono assistance. A public interest matter is one that affects a significant number of people, or which raises a matter of broad public concern, or which requires legal intervention to avoid a significant and avoidable injustice or is one that particularly impacts on disadvantaged or marginalised groups. The community organisation or individual must be eligible for assistance. QPILCH can be sourced at [www.qpilch.org.au](http://www.qpilch.org.au)



*“people you  
can talk to”*

## News from the Smith & Stanton Staff

### Teresa

You might remember Teresa our receptionist whose husband in the armed forces was transferred to Darwin at the end of last year. We are all delighted to hear the news that Teresa has given birth recently to a baby boy, Jack, and that the family are all well.

### The Firm

Plans are underway to celebrate our birthday this year with the firm turning 30 in April. There are a few functions planned to observe this milestone.

### Catherine McKenzie

Catherine, our longest serving employee, is finishing her final Law subject this term and will be admitted as a legal practitioner about mid year. We are all looking forward to helping her celebrate this great achievement.

### The Green Apple Gym

Our clients will now be dealing with some of the fittest in the business with three members of staff now all heading to the Green Apple Gym for their daily workouts after work. Bruce Smith joined the gym about a year ago and heralded the benefits far and wide among the staff so that now fitness discussions dominate office conversations.

### Other Tidbits

Did you know that the Office of Fair Trading website – <http://www.fairtrading.qld.gov.au> has information and a number of helpful checklists on such things as:

- 10 simple checks to ensure a smart on-line shopping experience
- Buying and selling real estate
- Buying a computer
- Installing a rain tank
- Exercise equipment and gym equipment