

Newsletter

Body Corporate issues

When you purchase an apartment or town house, the Contract will contain an Information Sheet about Body Corporate levies and charges. The levies and charges cover the shared expenses of running the apartment or town house complex. The Information Sheet will also tell you who administers the Body Corporate and where the records are kept. At Smith & Stanton, we never rely solely upon the Information Sheet. We always recommend that a contract be made subject to a Body Corporate records search and inspect the Body Corporate Minutes of past meetings to obtain information which a buyer would not otherwise know. Two cases demonstrate the importance of this inspection –

Case 1 John and Mary wanted to purchase a very expensive apartment at Noosa. John had noticed a recently erected wall in the basement car park which the agent told him was to be storage space for the building manager. An inspection by Smith & Stanton of the Body Corporate Minutes revealed that there was a major structural crack in the ground floor wall caused by subsidence of the foundations for which the Body Corporate had a \$400,000.00 quote for repairs. The Body Corporate was about to strike a special levy on proprietors to cover the expense. The wall had been erected to screen the problem.

Case 2 Jane wanted to purchase a sub penthouse in a major inner city apartment block. The selling agent said that the owner was only prepared to deal with unconditional contracts. Smith & Stanton recommended that a condition be written into the contract providing for a Body Corporate records inspection. The inspection subsequently revealed that 10 of the apartments were owned by the original developer and 30 apartments by others. The Body Corporate manager was appointed by the majority of owners and opposed by the developer. Litigation had ensued about the appointment. A special levy had been struck to cover the cost of the litigation. Also a mechanical report was found in the records indicating that a lift would have to be replaced at a capital cost of \$100,000.00 and with a lift service



downtime of at least 2 months. (Jane's target apartment was on the eighth floor.) Jane didn't proceed. The all up cost to the proprietors of the litigation and lift replacement was \$350,000.00.

These cases demonstrate the importance of conducting a Body Corporate records inspection as well as having legal advice before committing to contracts.

If I own a unit or townhouse in a Body Corporate complex, how does Council determine how much water I have used?

Prior to 1 January 2008 there has not been "one rule" for all complexes.

In most complexes there is a single water meter that measures the water consumption of the entire complex. In this case, Council either bills the body corporate (which in turn bills the unit or townhouse owners based on lot entitlement) or Council bills each unit or townhouse owner, again based on lot entitlement. Lot entitlement is set by the developer at the time of development of the complex. Council has no role in setting these entitlements.

In some (but few) complexes, every unit has its own water meter and each unit owner is billed for their individual water consumption.

As and from 1 January 2008 it will be mandatory for all new unit developments to have installed separate sub-meters for each lot.

This means that individual owners have knowledge of their own water use, and can make attempts to reduce their consumption in these times of water shortage. It also allows a mechanism for calculation of water usage and cost in commercial and industrial premises.

Amendments are to be made to Body Corporate legislation to prohibit body corporates from making their own charging arrangements for water use following the introduction of these mandates on 1 January 2008.

For existing complexes, water will continue to be charged in the same way it currently is, although individual unit owners may approach the Body Corporate to install separate sub-meters.



Solariums a growing legal issue

Repeated scientific studies are linking solariums to the risk of developing skin cancer and other skin conditions. This link is creating a complicated legal web for both lawyers and consumers. Already several Gold Coast women are taking legal action against solariums after developing adverse skin reactions from suntanning beds.

New research has revealed the use of tanning beds by people under the age of 35 raised the risk of developing melanoma skin cancer by 98 percent. Current cases include young female clients suing solariums after developing skin conditions, including rashes and scarring, after using suntanning beds. The adverse reactions are believed to be as a result of a chemical reaction between the suntanning beds and perfumes and cosmetics worn by clients. There is also a fear that chemicals used in body waxing may contribute to adverse conditions when using a suntanning bed.

An Australian Radiation Protection and Nuclear Safety Agency study found a person's chance of developing a melanoma skin cancer increased by 22 percent if they had used a solarium just once. Further, Queensland Institute of Medical Research (QIMR) statistics show that Australians are diagnosed with more than 9500 melanomas each year, ending in more than 1100 deaths. QIMR estimates that up to 62 of those cases each year are directly attributable to indoor tanning devices.

Modern Technology increases trade mark disputes

New business owners are being encouraged to carry out thorough checks before selecting a company name and logo, as resources such as the internet are increasingly being used to catch out copycat businesses. The internet has made it much easier for businesses to know when their name or logo is being infringed and consequently take action.

It has become much easier for people setting up a business to inadvertently infringe an overseas trade mark registration, given that the content of an Australian website can be accessed overseas and in some circumstances that can be considered a trade mark infringement. Various consequences will follow if businesses have a registered trade mark and you are using their name or logo or something similar. These could include damages, providing an account of profits, the cost of destroying all goods containing the infringed name, payment for corrective advertising and legal costs.

For a business to have a proprietary form of intellectual property, which allows action to be taken against someone who uses the same or a similar name, the company must have a registered trade mark. There is a common misconception that the registration of a business name or company name in Australia confers exclusive rights to that name.

If a business name is registered as a trade mark in Australia then the trade mark owner can prevent others from using a name that is 'substantially identical' or 'deceptively similar' anywhere in Australia for renewable periods of 10 years. Brand protection is an essential part of a business as it can take many years and a lot of hard work to establish a good reputation. New business owners should seek advice prior to starting a business under a particular name or logo to avoid nasty surprises.



Reverse Mortgages: Don't lock yourself into debt

For consumers thinking about signing up for a reverse mortgage, make sure that you fully investigate the long-term effects before taking this step. The Australian Securities and Investment Commission (ASIC) recently produced a report that found retirees lacked an understanding of reverse mortgages. The report surveyed 29 borrowers and found that almost half did not know how much the loan would eventually cost. Consumers are encouraged to fully investigate the terms and conditions of the loan and make sure they are aware of the overall cost.

Reverse mortgages are loans borrowed against a home, which do not need to be repaid until the house is sold. Nearly a quarter of those surveyed also did not receive financial advice or information about the risks involved before finalising their reverse mortgage.

Reverse mortgages are a growth area for the finance industry, but the glossy advertising can hide big pitfalls. A number of people who obtained reverse mortgages admitted to spending the borrowed money too quickly, saying it was difficult to resist the constant availability of money.

Retirees should check that loans have a negative equity guarantee ensuring debt cannot exceed the home's value. If not, you may have to meet the shortfall if your debt amounts to more than the value of your property. Increasing interest rates could result in the loan amount doubling within 10 years. Before signing up, speak to an independent financial advisor to determine if a reverse mortgage is the best available option, and to resolve any legal issues or problems with reverse mortgages, contact us at Smith & Stanton.



Remember refund rights and wrongs

Consumers taking back unwanted gifts after the festive season need to know their rights about refund entitlements before going back to the shops. The Office of Fair Trading receives hundreds of complaints about purchases each holiday season.

Common reasons for wanting a refund include poor quality or service, unsatisfactory warranties or misleading advertising by the trader. Consumers are legally entitled to a refund, exchange or repair if a product is faulty, does not do the job it is supposed to do, does not match the description or sample shown at the point of sale, or does not last for a reasonable time.

Some stores offer a refund or exchange for reasons other than these to generate goodwill and return business. However they do not legally have to do this. Most stores require proof of purchase before offering to refund or exchange products, so make sure you have any receipts or paperwork when returning an item.

Signs saying 'no refunds' or 'no refunds on sale items' are illegal and if consumers see these signs on display they should report it to the Office of Fair Trading.



*“rely on our
experience”*

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LAWYERS

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What will happen if I die without making a Will?

There are still many myths about this situation, one of the most prevalent being that “all the money will go to the Government or the Public Trustee”.

If a person dies without making a Will they are described as dying intestate. The law in Queensland spells out how an estate is to be distributed on an intestacy. Who will benefit depends on the deceased’s marital status and whether there are surviving children/relatives.

This only covers the distribution of the estate.

Who administers the estate of an intestate person? The Court Rules (the Uniform Civil Procedure Rules which govern the administration of Courts in Queensland) provide for a certain procedure to be followed in determining the most appropriate person to perform this role. The order of persons allowed or entitled to administer is prioritised by the interest or share that they receive from the estate. The Public Trustee will only administer an estate if there are not sufficient next of kin to perform this role.

So what does all this mean if you don’t have a Will? It might certainly mean that the persons whom you thought would benefit or whom you prefer to benefit may not necessarily receive your estate. Furthermore it is generally more costly to administer your estate if your next of kin have had to go through the process of appointing an administrator. Taking the time to make a Will is much more cost effective than dying without one and leaving it to your next of kin “to sort out the mess”.

If you would like to discuss any of these issues further, or to make or review your will, then contact Judy Smith at Smith & Stanton.



*“people you
can talk to”*

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Enduring Power of Attorney

An Enduring Power of Attorney is a legal document giving a nominated person of your choice the power to make decisions on your behalf. This person is known as your attorney. The word ‘enduring’ means that the power continues even if, after signing your Power of Attorney, you lose capacity to make decisions for yourself.

It is important to have an Enduring Power of Attorney to cover planned contingencies which might arise and others which are unexpected eg illness and dementia.

Your appointed attorney must be someone that you trust to make important decisions for you. This person is often a spouse, adult child or close family friend. As your attorney has a great deal of power you may wish to appoint more than one attorney to make decisions either jointly or separately. Your appointed attorney must also be over the age of 18 years and must not be bankrupt or insolvent.

Your attorney can make decisions regarding your personal health matters and/or financial matters. In regards to your personal health matters, your attorney’s power to make decisions for you does not begin until you are incapable of making your own decisions. With financial matters, you specify a date at which the financial power will commence, or the power may begin immediately you sign the Power of Attorney.

You may change or revoke your Enduring Power of Attorney document at any time, as long as you have the capacity to understand the changes that you are making. Other circumstances which may end the Enduring Power of Attorney are your death, your marriage or divorce, if you make an inconsistent document, or if your attorney withdraws, dies, or becomes bankrupt or incapable of making decisions for you.

An Advance Health Directive is a separate document to the Enduring Power of Attorney. It allows you to record specific directions regarding your future health. If you become seriously ill, unconscious or can no longer communicate your wishes regarding your health, this document makes your wishes known regarding important health issues.

Power of Attorney documents are an essential part of your Estate Planning. They are made “in case you need them”, however it is too late to make one if you do not have the capacity. Talk to Judy Smith at Smith & Stanton if you need any further information or would like to make an Enduring Power of Attorney.