

Newsletter

Watch Out for Scams

We often see clients who have been approached to enter into arrangements which they believe might be scams. Unfortunately, some of these people have already entered into arrangements and paid money to people that are involved in scamming. Scamming and other related fraudulent activity within Australia has been increasing over recent years. Scammers have become very skilled in developing methods and approaches that make it difficult for the general public to detect the fraudulent activity.

Some of the known scams that are operating at the moment include –

Unsolicited Advertising:

There are two types of scams which we have seen recently. One involves the scammer sending a business a tax invoice for advertising in a publication which doesn't exist. Often the invoice is sent straight to the accounts person and is paid without any double checking as to its authenticity. The second type of scam in this area involves unsolicited approaches from "advertising companies" which in fact don't exist. They promote journals or magazines and will often supply samples of previous publications (of which only one sample exists) and will try to con the unsuspecting business into parting with cash for advertising in their phony magazines.

Texting Scams:

There are a number of text scams, the most common being a text from an unknown phone number requesting you to call or text them back. Often the number to call/text is a premium number (such as 1900 numbers) which can cost over \$5 a minute to call – the caller is then billed for the call, only to find out the message was bogus.

Ebay or Internet Auction Scams:

Be aware of any unusual requests from people wanting to buy your goods online. The most common scam is for the "buyer" to ask the seller to transfer some money into a Western Union account (or similar type of account) so that they can arrange for a transfer of funds to pay for



the goods. As strange as it sounds, many people get caught out and never see their money again, as it quickly disappears into an overseas account.

When you receive an unsolicited approach from any company or organisation of which you have not heard, you should always do your homework. A quick Google search will often reveal whether the company you are dealing with is legitimate. The State and Commonwealth Governments have established regulatory bodies that will take your complaint if you have been scammed. These government bodies also have websites which offer good information about scams. One such website is www.scamwatch.gov.au which was set up by the Australian Competition and Consumer Commission to provide information about the latest scams. The Queensland Department of Fair Trade also has information about scams on their website: www.fairtrading.qld.gov.au/scams-and-fraud.htm which also allows you to report a scam online.

There are a number of ways we can assist you if you are unsure about an offer that has been made to you, or if you discover you have been scammed. Our commercial lawyers are experienced in a wide variety of business transactions and have good skills and resources to conduct due diligence inquiries on any entity which you may be unsure about. We can assist you in many ways, including conducting due diligence enquiries, stopping harassing phone calls or correspondence, or general advice about what to do after being scammed, including any remedies available to you. Fraud is a multibillion dollar problem in Australia – don't get caught out. If you feel uncomfortable about any transaction, contact us before you commit to anything.



Leases Exceeding 10 Years

When leasing commercial property, it is important to keep in mind that where part of a parcel of land is leased for a period of more than 10 years (including all the options), there is a legislative requirement that approval be obtained from the local Council. This is because the lease of part of land for a term of more than 10 years is considered to be a subdivision of that land. There are some interesting anomalies in the legislation which stipulate that if all of the leased area is contained within a building, there is no requirement to get Council approval. Therefore, where a lease for more than 10 years includes an open or exposed area, such as a balcony or car park, it is likely that Council approval will be required. If however the leased premises is fully contained within the building, Council approval may not be necessary. There may be ways to avoid having to obtain Council approval if a licence to occupy (rather than a lease) is used for any part of the exterior of the building which is to be leased.

Until recently, it was regular practice to get around the legislation to register consecutive leases in Titles Office. In other words, the landlord and tenant sign a 10 year lease, then sign a second 10 year lease with an advanced commencement date (rather than one lease with a 10 year option). There is recent case law to suggest that this practice will no longer be allowed and that consecutive leases will be considered one lease, therefore requiring Council approval.

It is important that the legislation relating to long term leases is understood, as it can have major impacts on both landlord and tenant. If you intend entering into a lease for more than 10 years, and the area being leased is part of a lot, you should check with us prior to entering into any agreement to lease, as there may be implications that neither party has anticipated.



*“people you
can talk to”*

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Retirement Village PIDs

(Public Information Documents)

Retirement Villages are becoming increasingly popular places to live for those of retirement age. If you ever consider moving into a retirement village, the Retirement Villages Act requires that you be given a Public Information Document (PID) from the operator of the village in which you intend to buy. The document is often very large and will contain a lot of information about the village and how it operates. The law states that the scheme operator must provide a PID to you before you enter into a residence contract.

The relevant legislation provides that a PID must contain the following information as a minimum:

- accommodation types
- the costs of units
- village facilities
- village land
- residents' rights and obligations
- fees and charges
- mandatory funds
- the resale process and exit entitlement
- exit fees
- financial information
- dispute resolution process.

The PID is therefore a very important document. It was developed by the Government to protect consumers and to allow consumers to compare villages. The scheme operator must ensure that the PID is up to date and that it does not contain any misleading statements. The PID should reflect the terms of the agreement that will be entered into between you and the scheme operator.

The PID documents can sometimes be very confusing and lengthy. It is highly recommended that you get legal advice before entering into an agreement with the village. When you seek legal advice, the lawyer will want to read a copy of the PID. It is important to make sure when the scheme operator gives you the PID that you deliver it to the lawyer for review. The succession law division of Smith & Stanton is very experienced in dealing with various retirement villages. If you require assistance please contact us.



Executor's Duties

In our last newsletter, we examined the duties of an executor of a will. In this newsletter we continue our discussion on this area of law.

After the Grant of Probate has been obtained, the lawyer will usually arrange for the deceased's accounts with financial institutions to be closed and for the proceeds to be paid to the solicitor's trust account for the estate. If shares are to be sold, then the solicitor usually also arranges for this. Any remaining debts of the estate can be paid from the proceeds of bank accounts and of the sales of shares and other readily saleable assets, and any loans to the estate by the executors and beneficiaries can be repaid from these estate funds.

If the deceased owned any real estate, then the titles for the properties can be transmitted to the executor "as personal representative". The executor is then able to sell the properties or to transfer the properties to beneficiaries, as directed in the will.

Superannuation proceeds do not automatically form part of a deceased estate. The superannuation trustee may pay those proceeds direct to a nominated beneficiary or to a spouse, child or dependant, or may pay the proceeds to the executor in his or her capacity as personal representative of the estate. If superannuation proceeds are paid to the executor, there may need to be tax deducted and paid from those proceeds.

After the estate assets have been collected or sold, and the estate debts have been paid, it is the executor's duty to arrange for the net estate to be distributed in accordance with the will. Specific gifts of money can be paid, usually by way of cheque from the lawyer's trust account. Specific bequests of property (eg. real estate, jewellery, motor vehicles) can be transferred and delivered. Whatever is left after the payment of debts of the estate and the distribution of specific gifts is the "residue" of the estate, and that residue will then be paid, given to or divided amongst the residuary beneficiary or beneficiaries.

Personal assets such as furniture, clothing, household chattels and jewellery can, if not the subject of specific gifts made in the will, either be sold or be divided between the residuary beneficiaries in accordance with their respective shares under the will. Unless the will specifies otherwise, it is up to the executor to decide whether to sell and how to divide up those personal assets. This decision is usually made in consultation with the residuary beneficiaries.

However, the executor should not distribute the estate unless he or she is satisfied that there are no "family provision" claims against the estate. Such claims can be made by a spouse, child or dependant of the deceased who considers that adequate provision has not been made for him or her in the will of the deceased. In Queensland, provided that a period of six months has passed since the date of death and the executor has not received notice of any family provision claim then the executor is entitled to distribute the estate to the beneficiaries. If the executor wants to distribute the estate earlier than six months from the date of death, then it is possible for all potential claimants to be requested to sign waivers of their right to bring any family provision claim.

Final distributions cannot be made until any final tax return has been lodged and the final tax assessment has been received and paid. Often the executor will authorise interim distributions to be paid to the beneficiaries at a relatively early stage but for some estate funds to be retained at that time in the solicitor's trust account to cover the estimated tax liability pending preparation and lodgement of the final tax return.

In most circumstances, there will not be an immediate capital gains tax liability when CGT assets are transferred to beneficiaries as a consequent of the death of the asset holder. However, the beneficiary will have a potential capital gains tax liability when the asset is ultimately sold by him or her. Where such assets are transferred to a beneficiary, the executor should also provide to the beneficiary the documents and information from the estate which will allow that beneficiary to be able to ascertain or be advised on his or her CGT liability for when that asset is ultimately sold.

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Some wills provide for assets or trusts to be held in long term trusts, for example where there are infant beneficiaries. The executor needs to take the required action to establish those trusts and to transfer the relevant asset or funds into those trusts. Sometimes the executor will be the trustee for those trusts, and sometimes there is a different trustee who is appointed by the will.

For many estates, the administration process will take about 12 months or less. Of course, the administration will take longer if real estate or other assets cannot be sold quickly, if there are family provision claims, or if the financial or tax affairs for the estate involve more than one financial year.

It is possible for an executor to be paid from the estate for his or her administration work. The required procedure is for the executor to apply to the Court for authority for the payment of "commission" to the executor. The Court can authorise payment of whatever amount the Court thinks fit. There is no set rate, but an example of an order for commission recently made by the Queensland Supreme Court was 1% on income and 2% on capital (the estate was worth about \$1,000,000). If all residuary beneficiaries are over the age of 18 years and able to consent, then payment of commission can be authorised by the unanimous approval of the residuary beneficiaries, in order to avoid the cost of a Court application.

It can be a busy and stressful time being an executor, but you will be fulfilling a necessary role. Further, you will have been appointed because the deceased considered that you were the person who he or she trusted to see that his or her wishes were carried out. To be a good executor, you do not need to have knowledge yourself of all of the legal and financial aspects of estate administration, but you will need to have common sense, to be prepared to obtain and follow legal and financial advice, and to act fairly and reasonably.

For specific advice on acting as an executor or on who you should appoint as an executor, please speak with one of the solicitors in our wills, estates and estate planning team.



Smith & Stanton News

Welcome **Kerrie**

Smith & Stanton is happy to announce that Kerrie Dowling has joined our very busy succession law team. Kerrie will provide valuable part time administrative support and is a welcome addition to the firm.

Out and About

As head of the Wills and Succession Planning division of Smith & Stanton, Judy Smith's role includes addressing public meetings to help to demystify complex estate processes and to ensure that people are encouraged to make wills that take into account a thoughtful and properly considered succession plan. This is often done in conjunction with financial planners and accountants.

In July, Judy Smith participated in a discussion and workshop on estate planning for Wealthy Frog Wealth Coaching group. On 6 August, Judy spoke about Wills and Powers of Attorney to a lively group at the "Life Begins at 40" Healthy Women's Expo run by the BreastScreen Queensland Brisbane Northside Service. On September 9, Judy gave a talk about Wills, Powers of Attorneys and Estates to the Women's Advisory Group at their annual Women's Network Forum at the Stafford Police Station.

As community lawyers we will continue to participate in these forums to increase public awareness about these important matters that affect every one of us.

Fundraising for **Camp Quality**

Congratulations to all the staff at Smith & Stanton who participated in the Bayside to Bald Hills charity walk in July. Smith & Stanton's donation along with the funds raised from this event went towards helping the Camp Quality charity.

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