

COLQUHOUN
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issues



Winter 2009 edition 8

SOLICITORS, ATTORNEYS-AT-LAW
MEDIATORS - ACCREDITED SPECIALISTS
BUSINESS & PROPERTY LAW
MIGRATION AGENT - NOTARY PUBLIC

incorporating
Paul L Henke & Co

Celebrating 40 Years

This year Peter Colquhoun and Paul Alice celebrate the founding of the firm 40 years ago.

The firm was originally called Robert Colquhoun & Associates. Robert was known for his Local

Court skills and practical Conveyancing advice. The firm has continued to grow and consolidate and was recently joined by Paul Henke as a consultant with 38 years experience in Balmain.

Robert Colquhoun, Barrister of 32 years returned to the firm to celebrate its 40 years of service.

Pictured Left to Right
Paul Henke, Paul Alice, Robert Colquhoun,
Peter Colquhoun



FAMILY LAW Financial Agreements

Michael Duong who now heads up our family law team recommends that clients who are about to enter into a de facto relationship, or who are in a de facto relationship, think seriously about signing a Financial Agreement ("prenup"). Your assets can be at risk even if the relationship ends before the 2 year threshold.

Financial Agreements can provide financial certainty, promote harmony in a relationship and reduce the likelihood of litigation if the relationship ends and a dispute arises. It is relatively cheap insurance against the loss of assets and unnecessary costs of litigation.

Peter Colquhoun - Partner

focus article
SUPERANNUATION WILL

SUPERANNUATION WILL

(Super benefits – who gets it when you die?)

The surviving trustee of a self managed super fund is likely to have the discretion to distribute the balance of your entitlement to whom ever they please.



They are not bound to distribute your benefit to your estate or in accordance with your Will. They may even be able to give it to themselves.

If you have children from another relationship to whom you would like to give a share then they are at risk of missing out.

The recommended strategy for the distribution of a deceased's benefit in a self managed super fund includes a deed enforceable in the courts which binds the surviving trustee ("superannuation Will").

This "superannuation Will" is used in conjunction with:

- a. a regular Will;
- b. a testamentary trust;
- c. a living Will (regarding healthcare/resuscitation); and
- d. an enduring Power of Attorney (in the event of loss of capacity).

Do not leave the distribution of your hard earn wealth to chance.

Paul Alice - Partner

CONTESTING WILLS

Recent cases and amendments to the Succession Act on 1 March 2009 have changed the ways Wills can be challenged. Challenging a Will can result in delays in winding up estates and making distributions to beneficiaries.

Executors may make an early distribution of assets by carefully following our recommended procedure. In this way they can avoid personal liability if a subsequent claim is made within 12-18 months or longer after the death of the testator/testatrix. Six classes of people are now recognised as having an entitlement to make a claim under the Act.

A recent case of a university student boarding with an elderly lady some years before she died, paying

little in the way of rent or board, successfully made a claim for a provision out of her estate and was awarded \$425,000.00 by the court. His only connection was that at some time in the past he lived in the same house, got cheap or free board and provided some minor assistance to the deceased which was enough for the court to find a close personal relationship existed.

The claim by the university student could have been avoided if the occupation / relationship had been properly documented to expressly rebut the allegation of a close personal relationship.

Case: (Fung v Ye [2007] NSWCA 115)

Natalia Veksler– Solicitor



Peter Colquhoun - Partner

issues

Other editions of **issues** cover:

- Family Law • Employment Law • Leases
- Building Disputes • AVO's • Migration Law
- Living Wills • Home Owners Building Defects
- Drink Driving • Reverse Mortgage • Debt Recovery

To add other names to our free distribution list, or if you do not wish to receive further editions of this newsletter, please email: law@colquhoun.com.au

Please Note!

The contents of this newsletter are not intended to be legal advice and should not be relied upon. They are general in nature and recipients should in all instances obtain independent and comprehensive legal advice in relation to particular issues.

Your Privacy

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LEGAL AUDIT FOR YOUR BUSINESS

Lack of attention to detail can put your business at risk. Working in the business rather than on it can give little time for strategic planning.

A legal audit for your business can assist you to identify potential problem areas, minimize risk and provide you with a checklist and timetable for critical events.

Fine tuning your practices and procedures can assist in securing the long term survival of your business, its profitability and enhance its value.

Paul Alice - Partner

On the lighter side

What's the difference between a good lawyer and a great lawyer?

A good lawyer knows the law - a great lawyer knows the judge



"And so I ask the jury... is that the face of a mass murderer?"

major areas of work

Peter Colquhoun
Partner

- Accredited Specialist Business Law
- Leases • Probate/Deceased Estates

Paul Alice
Partner

- Business Law • Partnerships
- Commercial Litigation • Employment Disputes

Paul Henke
Consultant

- Accredited Specialist Property Law
- Conveyancing

Michael Duong
Solicitor

- Family Law • Children's Law
- De Facto • Same Sex Relationships
- Drink Driving/Criminal Law

Natalia Veksler
Solicitor

- Deceased Estates
- Will Disputes • Migration Law
- Bankruptcy

Kate Zitner/Kim Hayes
Conveyancers

- Conveyancing • Mortgages
- Pre-Auction Contract Review



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