

In the Loop

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Business Names - A New Regime in 2012

THERE IS a great deal of confusion in the business world regarding the differences between business names, company names and trade marks. For example, business name registrants often mistakenly assume that mere registration of a business name provides similar property rights to that of a trade mark holder and protects them against an infringement claim by the holder of a prior registered trade mark. This is not the case.

Essentially, a business needs to register a business name in any state or territory in Australia if it carries on business or trade in that state or territory and is not trading under its own name. For example, Fred's Flowers Pty Ltd would be able to trade as "Fred's Flowers" without registering a separate business name, but would be required to register a business name if the company wished to trade as "Fred's Flowers and Gardening Services". This is so the public can easily identify the entity behind a business/trading name.

The current state based system is cumbersome and requirements vary from state to state. On 13 October 2011 Federal Parliament passed the Business Names Registration Bill (Cth) and a national registration system is due to be implemented in mid 2012, subject to legislation being passed in each of the states and territories.

What are the key changes for your business?

- Current business names will automatically be migrated from state registers to the new Business Names Register.
- There will be lower renewal fees and the period of business name registration will now be either one or three years. Registration of a new business name or renewal of an existing name will cost \$30 for one year and \$70 for three years.
- Businesses will only need to make one application for a new business name, regardless of where in Australia the business is trading.
- The pool of available business names may be

reduced because of the restriction on business names that are identical or very similar to business names that are already on the register.

- It will be a requirement for the business to have an Australian Business Number (ABN) or be in the process of applying for an ABN in order to register a business name and the business will be required to include its business name and ABN on all external written communications.
- Businesses will be able to register a national business name online and will receive immediate confirmation of registration.
- The online registration system will provide links to conduct trade mark and domain name searches. This highlights the fact that registration of a business name does not mean that the applicant has actual property rights in the name.

What do you need to do?

In short, not a great deal at this stage.

The most important requirement is to ensure that you maintain any current business names you have registered, so that your business names are entered in the new register in due course. If you are planning on registering a new business name, it would probably be advantageous to do so under the existing system, to avoid the possibility of the name not being available in a narrower group of business names under the nationalised system. However, this cannot be done on a speculative basis (i.e. merely to reserve a business name that you may wish to use in future, in a similar fashion to registering domain names for speculative purposes, which is known as "cyber squatting".)

Please contact Harvey Bowlt or Tony Oakley for further advice.

Harvey Bowlt
Senior Lawyer
Accredited Specialist - Business Law

In Brief

Personal Properties Securities Register (PPSR) postponed until early 2012.

For more information visit:

www.ppsr.gov.au

or contact Tony Oakley or Harvey Bowlt.

From 1 January 2012, the Australian Consumer Law (ACL) introduces new requirements on the form and content of 'warranty' documents. We recommend that manufacturers and suppliers review their warranties to ensure compliance with the above provisions. Please contact Harvey Bowlt.

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Property Divisions in "Short Relationships"

IN AUSTRALIAN family law, the term "short relationship" is often used to describe a marriage or de facto relationship which has lasted for about five years or less.

A court will use the same process to divide an asset pool regardless of the length of the relationship. The process consists of four steps:

1. identify and value the net assets of the parties;
2. weigh the contributions of each of the parties to the assets;
3. consider the "future needs" of each of the parties and
4. in light of each of the preceding factors, divide the assets in a manner which gives the parties a just and equitable result.

However, in family law specific issues will affect the division of

the wealth of the parties to a short marriage or relationship, particularly in childless short marriages or relationships. These circumstances include situations, where:

- one party has contributed a substantial sum at the commencement of the relationship whilst the other party has contributed relatively little; or
- one party brought an asset into the relationship and the asset experiences significant growth (or decline) in value during the relationship; or
- one party's earning capacity far outweighs the earning capacity of the other party, and the non-contributor has had the benefit of an increased standard of living for a short period of time.

In these scenarios, a court will give initial contributions para-

mount importance, subject to any contributions subsequently made by the parties and the treatment and use of the initially contributed asset during the marriage/relationship.

Although the consideration of financial contributions in the above scenarios will be extremely significant, the non-financial contributions (including homemaker contributions) and the "future needs" of each of the parties will also be relevant.

Amanda Rajah
Family Lawyer

This article provides a summary of a paper entitled, "Property Division in Short Relationships" by Paul Fildes presented at the Leo Cussen Centre for Law on 12 August 2011.

For any family law queries, please contact Dorothy Pellew or Amanda Rajah on 9550 4600.

Non-Estate Assets Including Superannuation

WEALTH CAN be held in a variety of ownership forms. Estate planning requires a careful and considered examination of ownership structures to determine exactly what will fall within your estate and what will not, and to plan as appropriate for the disposition or control of these assets.

Increasingly, more and more of an individual's wealth will be held outside the estate. These non-estate assets will include real estate and other property held as joint tenants, assets held within a company or trust, assets held within a superannuation fund (self managed or otherwise) and certain insurance policies.

Where a client has a superannuation interest in a large Australian Prudential Regulation Authority fund, it will be important to understand how the death benefit will be paid in due course. Enquiries should be made to determine whether the fund offers the ability to make binding death benefit nominations and, if so, the fund's requirements for doing so.

Increasingly, a significant part of family wealth is held within a self managed super fund (SMSF). However, it is often not until a member of a SMSF dies that anyone turns their mind to what needs to be done about the superannuation death benefit. Problems can arise:

- where there is uncertainty about the regulatory and trust deed requirements;

- where tax implications have paralysed those responsible for finalising the member's affairs; or
- where there is a dispute about who should receive the benefit.

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Superannuation death benefits can only be paid to one or more of the member's dependants, the deceased's legal personal representative (LPR) (being the executor of the will or administrator of the estate of a deceased person) or to any non-dependant where a dependant or LPR cannot be identified. There is a degree of inflexibility as to who can receive superannuation death benefits directly. If a member wants to benefit a person who is not a 'dependant' for superannuation law purposes, this can generally be achieved only by having the benefit paid to the LPR, to be applied to the required beneficiary under the Will.

For any estate planning queries, please contact David Williams or Lachlan Vallance.

Lachlan Vallance
Lawyer

