

Family Law News - Elias Hanna has joined the team at HOCW



We are delighted to introduce you to Elias Hanna, Senior Associate - Family Law.

Elias leads the Family Law department at Hicks Oakley Chessell Williams and has over a decade of experience, practising in Sydney to begin with and for the last four years in Melbourne.

Elias has a great deal of understanding about what his clients are going through and has the sensitivity, knowledge and skill to guide them through the most complex of family law matters.

Tenant Checklist - 13 things to find out before entering into a commercial lease

A lease is a contract which will bind the landlord and tenant and any guarantor. The association may be a long one, and it is fundamental that certain enquiries are made by the parties at the outset to avoid future problems.

At a minimum the following enquiries should be made by the prospective tenant:

1. Title Search

A title search should be conducted to check that the proposed landlord is the registered proprietor, to see if there are any encumbrances which may restrict the tenant's use (such as a restrictive covenant) and to check if there are any mortgages registered, in which case the mortgagee's consent must be obtained. There may also be caveats which either should be withdrawn or the consent of the caveator obtained. A title search will also reveal if there are any leases registered which need to be removed.



2. Building Orders

The tenant should obtain confirmation that any building orders have been complied with.

3. Essential Safety Measures

The Essential Safety Measures register should be inspected to ensure that inspections are up to date and that there are no outstanding issues.

4. Property Report

A property report should be obtained to ascertain the zoning of the property and to determine whether a permit is required in order to carry out the intended use at the premises.

5. Survey Plan

A copy of a survey plan should be checked to make sure it accords with the premises being leased.

6. Condition Report

A condition report should be obtained and photographs and videos taken so that evidence of the condition of the premises at the start of the lease can be established. This will be extremely useful at the end of the lease when determining the tenant's make-good obligations. The condition report should be signed off by both parties.

7. Rent and Outgoings

Information regarding rent and outgoings should be sought, especially where the *Retail Leases Act 2003* does not apply and the landlord is not required to provide written estimates. Is there agreement on rent reviews?

8. Required Consents

Any required consents should be obtained (mortgagee, head landlord, Ministerial if applicable).

9. Form of the Proposed Lease (including term of years and options)

The form of the proposed lease should be ascertained. Some bank lenders will want to see a term plus options of at least ten years.

10. ASIC Search

If the landlord and/or tenant is a company, an ASIC search should be obtained to check who the directors/shareholders are. It will also reveal who has capacity to contract on behalf of the company.

11. PPSR Search

The Personal Property Securities Register should be searched to check whether any security interests exist.

12. Conveyancing Certificates

Depending upon the length of the lease and the rental being paid, it may be prudent for the tenant to undertake the usual conveyancing certificates and even consider registering the lease on title.

13. Preliminary Agreements

Is there any preliminary document such as Heads of Agreement which should be considered? Has the landlord appointed a managing agent?

A strong and fair lease is an extremely important asset of any business and will be especially important if you decide to sell the business or transfer the lease to another tenant. We highly recommend that you obtain legal advice as early as possible in the negotiations to ensure that you understand your rights and obligations before entering into the relationship.

Dianne Hodge - Senior Associate

Accredited Specialist - Commercial Tenancy Law



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Stepchildren are also eligible to make a claim against an estate

While recent legislative changes mean fewer people can make claims against deceased estates, a new case indicates that at least one of the categories of eligible claimants may be broader than anticipated.

In 2015, sweeping changes were made to Part IV of the *Administration and Probate Act 1958* (the Act) in a bid to limit those eligible to make a claim for provision or further provision from the estate of a deceased person.

Stepchildren are among the limited number of people now eligible to make a claim.

While a stepchild is commonly defined as the child of a husband or wife by a previous marriage, a recent Supreme Court of Victoria decision indicates courts may construe the term more broadly when determining the eligibility of Part IV claimants.

In *Bail v Scott-Mackenzie* [2016] VSC 563, which was handed down in September, the plaintiff's mother and the deceased had been in a de facto relationship for more than 40 years. They never married. After the death of the plaintiff's mother, the deceased had a relationship with another woman, to whom he left his entire estate.

The plaintiff made a claim against the estate saying her relationship with the deceased had been long and loving and he had made promises that he would leave his estate to her.

The defendant argued that the plaintiff was not an eligible person under the Act because the deceased and the plaintiff's mother were never married. Alternatively, the defendant argued that even if the

plaintiff was the deceased's stepchild, the relationship between the deceased and the plaintiff's mother ended upon the latter's death.

The plaintiff argued that it would be out of touch with community attitudes to argue that a domestic partnership was not similar if not identical to a marriage.

In deciding that the plaintiff was an eligible person, Associate Justice Derham relied on an explanatory memorandum accompanying changes to the Act which stated that the definition of a stepchild was not limited to the child of a deceased's spouse but also included a child of the deceased's domestic partner.

Further, he held that the plaintiff was an eligible person as the relationship between the deceased and the plaintiff's mother was undissolved at the time of the latter's death.

Before the changes to the Act came into effect in January 2015, any person could make a claim for provision or further provision from a deceased estate as long as they could show the deceased had a responsibility to provide for their "proper maintenance and support".

Eligible claimants are now limited to categories including current or former spouses or domestic partners, children and household members and grandchildren who were wholly or partly dependent on the deceased and stepchildren.

For further information please contact Lachlan Vallance - Principal Accredited Specialist - Wills & Estates

Kate Williams



Government releases more superannuation legislation

On 27 September 2016 the Government released another round of draft legislation implementing a number of the changes to superannuation it announced in the 2016 Federal Budget.

Many of these changes will apply from 1 July 2017 so it might be sensible for you to start thinking of how your superannuation will be impacted by the changes now and whether you might need to change any of your SMSF's arrangements.

Included in the latest legislation were amendments relating to:

- Implementing the Government's \$1.6 million transfer balance cap, which places a limit on the amount an individual can hold in the tax-free retirement phase from 1 July 2017.
- Lowering the concessional contributions cap to \$25,000 per year for all taxpayers from 1 July 2017.
- Reducing the income threshold at which individuals are required to pay an additional 15 per cent contributions tax, from \$300,000 per year to \$250,000.
- Providing greater flexibility for those with broken work patterns by allowing individuals with balances of less than \$500,000 to 'carry forward' unused concessional cap space for up to five years.
- Removing the tax-free treatment of assets that support a transition to retirement income stream.

Some of these changes may require you to adjust your investment, contribution, pension and estate planning strategies going forward. This will most likely be the case if you have a superannuation balance of over or close to \$1.6 million, were planning on making significant contributions to superannuation in the next few years, are a high income earner or have a transition to retirement pension in place now.

How can we help?

If you are concerned that the Government's changes to superannuation are going to affect you, please feel free to give me a call on 9550 4600 to arrange a time to meet so that we can either discuss your particular requirements in more detail, or refer you to an appropriately qualified adviser if financial advice is required.

Tony Oakley - Principal
Accredited Specialist - Business Law

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