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NODCO Adviser™

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AN AUTHORITATIVE NEWSLETTER FOR LAWYERS, CLIENTS AND ASSOCIATES

Time is of the essence

Time to perform any legal obligation or exercise a legal right is limited by circumstance, express agreement or statute.

Time is critical for contracts to be performed.

Time is intentionally limited by statute to prevent claims for compensation being made many years after a right to sue arises. These times can vary between 6 months and 6 years depending on the nature of the right to claim and State of Federal laws affecting the claim.

A broken contract can have different time limits for multiple breaches –

- Express or implied condition;
- Federal Statute for example – Trade Practices Act
- Victorian Statute for example – Sale of Goods Act, Sale of Land Act, Fair Trading Act

Early legal advice avoids future disappointment and protects your rights.

Super funds can now borrow to buy property

Super funds can now acquire property under finance for investment. The acquisition process requires –

- A new property to be purchased by a security trustee (not the super trustee) on trust for the super fund.
- The acquisition is funded partly by capital from the super fund and borrowings by the security trustee which have no recourse to the super fund
- The super fund must have the right to acquire the property by one or more instalments to the security trustee

Early legal advice is recommended to ensure your fund complies with legislation.

Nicholas O'Donohue & Co works with super funds, financial planners, fund trustees and lenders to finance property acquisitions.

Protection for you now and your family in the future

Your estate plan should be the blue print on which you build and protect your wealth for contingences of disability, infirmity and ultimate demise.

Strategic consultation with your lawyer and financial advisers before a decision to acquire or divest an asset can reduce expense and tax and protect your wealth to achieve your current lifetime goals. Assets can include real estate, business, shares, inheritance, beneficial interests, etc.

Early advice often avoids considerable legal costs paid to resolve



claims against assets arising from disability or infirmity, business and personal relationship break downs, insolvency and ultimately death.

Owners Corporation replaces Body Corporate

The Owners Corporation Act regulates all strata title owners from 1 January 2008. Single ownership of all allotments in the subdivision are not exempt. Two lot subdivisions are exempt. The Owners Corporation (formerly body corporate) must come into existence immediately after the subdivision Plan is approved. The Owners Corporation must establish Owners Corporation Rules to apply to owners and tenants. Membership is compulsory and limited to lot owners.

The Owners Corporation manages, maintains, repairs and insures common property and more importantly plans and budgets for future repairs (including capital upgrade costs), collects fees, keep accounts and an owners register. An Owners Corporation Certificate replaces the Body Corporate Certificate provided to owners, purchasers and mortgagees.

Voting rights of each member reflect their liability to contribute toward expenses.

Relationships Register

From 1 December 2008 heterosexual and same sex couples can record their relationship on the Relationships Register at the Births Deaths and Marriages Registry.

Relationship Certificates will be issued as conclusive evidence of the relationship useful for entitlements to superannuation and life insurance.

- Guardianship or Administration
- Business structures
- Property contract disputes
- Australian Securities Income Fund
- Our People

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Couples registering their relationship should also have a Cohabitation Agreement to define their property entitlements.

Guardianship or Administration

VCAT commenced on 1 July 1998 and celebrates its tenth anniversary this year. The Guardianship List took over the role of the former Guardianship and Administration Board at that time and is responsible to protect the interests of persons who first had orders made over 20 years ago.

Nicholas O'Donohue & Co was the first law firm appointed an Administrator by the former Board. Today we continue providing legal and dedicated private management assistance to elderly and disabled clients via VCAT or as client appointed Attorney. This is a unique service built on over 20 years experience.

Clients who have a Financial Enduring Power of Attorney or Guardianship appoint their preferred Attorney or Guardian to care for them.

Business structures

The corporate structure is considered today to be the best vehicle for management, taxation and ownership of a business. This view was recently repeated in Issue 384 of Lawyers Weekly (25 April 08) which quotes expert opinion that 'incorporation is the future of the nation's law firms'.

Nicholas O'Donohue & Co were progressive when incorporated in 1999. The results of incorporation seen in an increased ability to think and work more creatively in relation to the management of the practice and increased governance have been positive.

Business and professional clients should consider relevant tax implications and future succession planning with legal and financial advice before embarking on conversion to a corporate entity.

Property contract disputes

Contracts for sale of land must be in writing to be binding. If the contract is well drafted and unambiguous there is usually no reason why a dispute would arise in its interpretation.

Dispute may arise over ambiguity due to poor or unclear term or absence of an essential term and resolution is only available with expensive and slow Court intervention.

The Victorian LIV/REIV copyright Contract includes a fast and cost effective alternative dispute resolution option for a dispute to be referred to the Property Law Dispute resolution Committee of the Law Institute.

The Committee comprising Senior Property practitioners provides an informed decision to the parties that is cost effective and fast. The Chairman of the Committee is Frank Lynch who has been a partner at Nicholas O'Donohue & Co for over 30 years.

Australian Securities Income Fund

Australian Securities Limited a subsidiary of NODCO manages the fund now entering its ninth year. The fund has low management fees, investments are not pooled but specifically approved by an investor and interest rates are set to reflect a fair return for the security offered. Minimum term 1 year.

For information and rates -

www.australiansecurities.com.au or call 1300 275 275

Our People

Since 1925 the practice has enjoyed valuable contributions from our practitioners and paralegals. Since 1991 our senior staff are recognised by presentation of the designer NODCO pin for 10 years continuous employment and supplemented with incremental seniority allowances after 5 years.

Mark Schofield our litigation director celebrated 10 years in May 2008 and we are looking forward to celebrating Sara Jholl our Commercial Director and the only female to become an accredited business law specialist in Victoria will achieve 20 years in August 2009.

For the latest news - www.nodco.com.au

The information contained in this newsletter is of general nature, current at the time of printing and not intended as legal advice. Clients should seek legal advice before acting on any information contained within this document.



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Where Law Works