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NODCO Adviser[®]

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AN AUTHORITATIVE NEWSLETTER FOR LAWYERS, CLIENTS AND ASSOCIATES

Nicholas O'Donohue & Co – Undergoes a New Look

In mid 2008, the reception area was remodelled into a new look client lobby. Clients now have access to a Client Relations Manager instead of a receptionist.



Features of the lobby consist of two feature lights by Louis Poulsen and a wall mural in the lightwell [pictured above] designed by Andre Barouh.

ASL Finance – Lending For Business

Australian Securities Limited (ASL) has become a more attractive finance option as a leading private lender following the global financial turmoil and banks limiting credit to private and business clients.

ASL now also funds Self Managed Superannuation Funds (SMSF). SMSF loans are traditionally five or ten year loans that apply to investment and newly purchased properties.

The LVRs are generally 60% or less with a common feature of these loans being that the interest or mortgage payment is self funding from rental income with the debt slowly reduced by contributions made by the fund members. ASL also has the relationships in place to ensure that the client receives the correct legal and financial advice if they wish to become involved in this type of scheme. Many super funds already invest in the Australian Securities Income Fund. ASL lending to SMSF is a new development that is well received by Financial Planners, Accountants and SMSF members.

ASL continues to lend up to 65% on quality residential and commercial securities for “business and investment purposes”. Clients can borrow against their property or properties for a variety of valid reasons. For example; the borrower may need to buy out a partner, purchase an additional property or purchase plant & equipment for their business. For more information about ASL for finance or ASIF for investment phone 1300 275 275 for additional information or a product disclosure statement.

Credit Control

Credit control is vitally important to the success of a business, particularly in these uncertain times. Prevention is better than cure. A few simple techniques can prove invaluable.

They include:

Make sure you have full details of the entity you are contracting with (ie. name, ACN, address, telephone number, director's details);

- Get a director's guarantee if you can;
- Make sure your standard contract is up to date, valid and has been checked by your solicitor;
- Your contract is in writing and signed;
- Do not continue working for a client if they stop paying.

Issuing Court proceedings to recover a debt is a last resort and in our experience is usually unnecessary.

When an account is overdue, telephone the client and discuss ways to rectify the situation. This both builds your relationship with the client and may result in you becoming aware of a problem within your own business. Simply sending account reminders is not enough.

If the client breaches any subsequent agreement reached then instruct solicitors to send a letter of demand. This, more often than not, results in the account being paid.

Recovery by Court proceedings can be slow therefore a negotiated settlement at an early stage is both cost effective and more often than not better for your cash flow.

Overholding under a Lease

Overholding means to continue to occupy leased premises after the Lease term has expired :

- with the consent of the Landlord; and
- on the terms of the overholding contained in the Lease.

Most often the Lease will provide that the overholding will be a monthly tenancy on the same terms and conditions under the Lease with :

- the monthly tenancy determinable by either party upon giving one month's written notice; and
- the rent capable of being increased upon one month's notice being given.

One month's notice is very short – it is not long enough :

- for the Tenant to locate an alternative premises; and
- for the Landlord to locate a suitable alternative Tenant.

Accordingly consideration must be given as to whether an appropriate overholding will be a monthly, quarterly or six monthly overholding. In permitting a continued overholding, Landlords must be watchful of the following:

- Asset protection
- Keeping up to date
- Financial planning
- New appointments



- That 364 day Leases which do not have further terms but if allowed to continue as a monthly tenancy could come within the application of the Retail Leases Act 2003 and be governed by the terms of the Act which is fairly onerous on Landlords; and
- That upon the expiration of a Pre Retail Leases Act 2003 Lease if a Tenant is permitted to continue to occupy the premises for a period of overholding exceeding 12 months, the Lease could come within the ambit of the Retail Leases Act and the Tenant may be entitled to a minimum term of 5 years under the Act, which may not be acceptable to a Landlord who may have other intentions for the premises.

For generations, Nicholas O'Donohue & Co has given advice to clients in regard to transfers and other more complex arrangements to protect the wealth of individuals. We have the mechanism and the skill to give effect to transfers and provide advice on risk assessment and implement procedures to provide protection. We are not alarmists and we ensure that common sense prevails in these arrangements. Fortunately, clients who have adopted protective mechanism and who required actual implementation are very few indeed. But as our older clients continue to remark...to be forewarned is to be forearmed.

Keeping up to date

NODCO manages over 40,000 wills for clients. During 2009 clients will be able to inspect their current wills via a secured internet connection.

Will reminder letters are mailed to clients every 3 – 5 years. Sometimes changes need to be made more often and can be overlooked or forgotten when family circumstances change. Avoid disappointment or upset within your family and remember to update your wills, enduring powers of attorney, medical treatment or guardianship documents should your circumstances change.

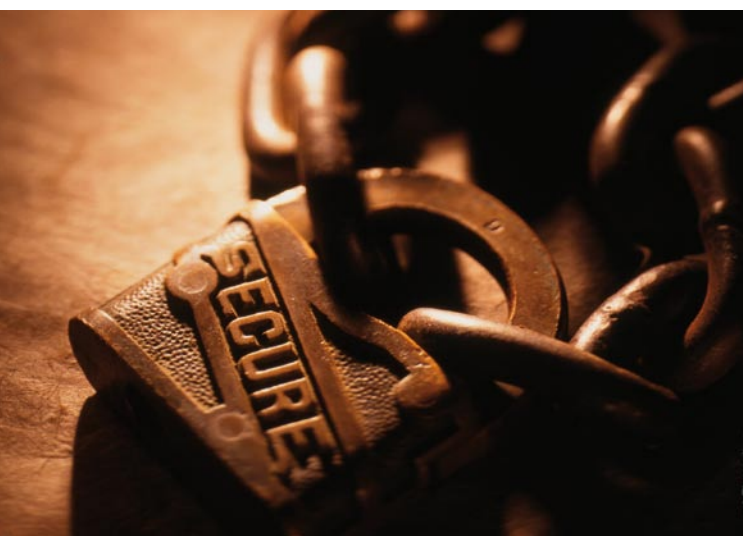
If you have a trustee for your family trust or super fund or have appointed someone your attorney review their ability every year to ensure your interests are being protected by the right person.

Financial planning

Mrs Marja Barouh has completed a Graduate Diploma in Financial Planning and will be able to provide clients with investment advice in 2009. Marja was formerly the Investment Manager for Australian Securities Limited and has been working for the past year assisting with the registration of our NODCO deeds in readiness for electronic client access.

New appointments

Mr Ken Chai has joined our litigation division and is responsible for Commercial and Finance litigation. Mr Brendan Parnell has joined our property division and will be working with Frank Lynch our Property Director to handle an increasing number of property transactions.



Asset protection

Asset protection is the adoption of planning techniques, which place one's assets beyond the reach of future potential creditors. It does not involve hiding assets, nor is it based upon secret agreements or fraudulent transfers. The protection of one's assets may be achieved by a simple transfer or by the complex use of trusts and companies.

The essence is to have your assets quarantined, if when things go wrong. It is of no use, and it is too late to act, when things have already gone wrong.

It is an unfortunate fact that litigation in Australia is increasing, and many actions have nothing to do with right and wrong, but instead, are predicated on the desire of one party to extract wealth from another party. In some cases, this action is not the desire to extract real wealth, but a desire to extract small payments as "nuisance" settlements, because it is often cheaper to pay out than to defend an action.

If you deal with the public, or if you are a company director, or a self-employed professional and have some wealth, you should consider taking steps for asset protection. You should review your insurances and conduct self-assessment of risk. When personal situations change, the procedures should be reviewed.



Nicholas O'Donohue and Co.
Where Law Works