



# P.M. Lee & Co

## Newsletter

### Property & Business Lawyers

Celebrating 30 years of practice in 2015



## Welcome

*to the May 2015 edition of our newsletter for business owners and investors. After a couple of slow years our clients are reporting a fairly strong start in 2015, with the steady economic recoveries gathering pace. We are looking forward to further steady growth in the next couple of years, and helping position our clients to make the most of that growth.*

*This edition focuses on family law and we are offering our readers a special free meeting with our family lawyers to help guide you in family law issues. On the business front, we foreshadow a review of employment law and provide some tips on auction contracts.*

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**SPECIAL OFFER**

## Family Law - free 30 minute advice

We understand that many clients are apprehensive before their first contact with a solicitor and want to ensure they are getting the right person to assist them in what can sometimes be a difficult time. For this reason we are offering a free 30 minute interview with one of our solicitors on any family law matter during May and June 2015.

If you have a family law issue you need help with, please call our office for 30 minutes of legal advice at no cost to you.

Our family lawyers can advise, negotiate and represent you in the following areas:

- Property settlement
- Divorce
- Parenting issues
- Binding Financial Agreements
- Drafting wills after separation





## *Spouse goes back for second bite of the cake*

It is becoming increasingly common for separating couples to make an informal settlement agreement, only for one party to challenge it years later. Even if there is a contract signed by both parties, if it does not comply with the *Family Law Act* the door is left open for either party to make a claim for a bigger piece of the cake in the future.

In the case of *Berrell & Berrell* [2013] FamCA 1012 the husband argued that the parties had reached an informal agreement in 2003 when the parties separated and it was not just and equitable for the Family Court to make a property settlement order in 2013. In rejecting the husband's contention the judge said:

1. That there is a long line of case law to the effect that an agreement between parties to a marriage that purports to exclude the jurisdiction of the Court offends public policy and is void; and
2. Under the Act, there are formal requirements that must be met in order for parties to enter into Financial Agreements, which if not met, can render those agreements unenforceable.

This is a big issue for some people because they weren't aware that their agreement, which they thought was 'rock solid', could be disputed in Court many years down the track. We recommend that all separating couples that are in agreement as to the division of the property pool finalise the agreement by consent orders with the court or by a Binding Financial Agreement. There are formal requirements surrounding Financial Agreements and those formal requirements, along with other factors, have resulted in a number of recent challenges to set aside Financial Agreements in property matters being successful.

Please contact us to advise you as to the requirements of a Binding Financial Agreement or consent orders.



## **I don't need parenting orders... or do I?**

Parents who get along after separation often reach an informal agreement as to the children's living arrangements and are able to put the children's interests above their own.

While this may seem the best solution for the parties, a parenting plan or informal agreement is not legally enforceable.

We recommend that you should always formalise your child arrangements by way of Consent Order where agreement has been reached.... just in case. We have seen informal agreements fall over for various reasons including:

- Parents re-partner and the needs of the parties change;
- Issues may arise in blended families;
- Conflict arises due to child support payments.

To avoid potential difficulties in the future for the parents and importantly provide stability and certainty for the children, it is advisable that you formalise parenting agreements by way of Court Order.

# *Keeping it cool after the auction*



**If you've been to a property auction, were you aware that there is no 'cooling off period' – a mandatory period during which time the buyer may change their mind about purchasing the property.**

For many people buying a home can be the single biggest financial commitment a person makes so if you're thinking of buying a property at auction you should not only carefully inspect the property, but do your legal research.

Auction contracts are usually unconditional and the normal 5 day cooling off period will not apply.

You should ensure that you do the full range of searches that you would do if you were buying through a regular sale – title searches, easements, building approvals, etc. For example, if you plan to build an extension on the property you need to ensure that there are no council restrictions because if it turns out after the auction that you can't there's nothing you can do. It's also important that you have your finance approved before bidding at auction. If the property is worth less than the purchase price, your lender may not want to provide you with finance. You will be contractually obliged to purchase the property even if your lender withdraws their finance. We suggest the following tips to assist you in ensuring that you don't get carried away in the heat of the moment:

- Provide a copy of the proposed contract of sale to your solicitor to check before the auction;
- Obtain Building Inspection and Pest Inspection reports to check for any unobserved defects;
- Consider which of the usual searches to do beforehand;
- Arrange for a trusted friend or local real estate agent to come along and help you bid.

Taking the time to get the advice and information about a property before an auction is the safest option.

## **I've changed my mind....**

### **can I rely on the finance clause to get out of a buying the property?**

It is a common misconception by buyers that they can rely on the finance clause to terminate a contract to purchase property. The finance condition of the contract (standard condition 3) provides that the buyer is required to take all reasonable steps to obtain finance and if requested, must demonstrate evidence in support.

This is highlighted in the case of *Hauff & Anor v Miller* where the buyer attempted to terminate the contract on the grounds of failure to obtain finance. The court stated that evidence must be provided that all reasonable steps were taken to secure finance by the finance date. The Court found that a failure to take such reasonable steps amounts to a breach of contract and activates the seller's right to affirm or terminate the contract. Given the buyer had not even submitted an application with the nominated financier the court was firm in finding that the buyer '*did not instigate the process required of her*'.

Having said that, if you find yourself needing an exit from a contract, talk to us ASAP. As accredited property law specialists we can offer you solutions that may help you, provided you act quickly.

## Employment – changes ahead

The Australian government has asked the Productivity Commission to undertake a public inquiry into Australia's Federal industrial framework. The aim is to identify improvements and examine:

- pay and conditions for employees;
- employers' ability to flexibly manage and engage with employees and to respond to changing economic conditions;
- barriers to bargaining between employers and others;
- red tape and the compliance burden faced by employers;
- industrial conflict and days lost to industrial action; and
- the appropriate scope for independent contracting.

Key issues for business will likely focus upon the impact of penalty rates, the barriers to hiring and terminating staff, the compliance cost of existing Fair Work Act processes, and union concerns. The commission's draft report is expected to be published in July of this year and the final report to be given to the government in November.

It seems that changes to the workplace relations system are on the horizon for next year. As to the extent of these changes is uncertain especially as we approach an election year.

We will keep you updated with the inquiry's recommendations. In the meantime we suggest that you talk to us about helping you with your employment contracts, policy documents and ensuring you are across your obligations as an employer.

## What our clients say about us

We routinely poll our client's satisfaction levels with our service questionnaire, providing us with feedback on our overall performance, professionalism, legal knowledge and quality. We are very pleased to report that of the last 50 replies 100% of the respondents rated our performance in the top two categories of either excellent (82%) or good (18%) and would recommend us to others. A sample response is [attached](#). A referral is our highest recommendation and is always greatly appreciated.

### What our client say:

"I valued the high level of service and professionalism afforded by all with whom I had dealings throughout the process of purchasing a commercial property. Peter Lee took great trouble explaining legal matters and their attention to detail was impressive." **A White**

"PM Lee & Co acted for us on a number of commercial leasing matters. Their expertise and professionalism has helped us as property owners to ensure that we are fully protected." **F. Otto**

## ABOUT P.M. LEE & Co.



**Peter Lee**

PM. Lee & Co. are specialists in property law, business and franchise law, estate planning and litigation. Since 1985 we have provided legal services to some of Brisbane's largest corporations, small and medium business and valued individuals. Our firm has built a solid reputation as experts in property law, body corporate and leasing, franchise law, business transfer, taxation as well as acquisition and conveyancing.



**Graham Knight**

Our firm is also well known in commercial litigation, debt recovery and family law.

Estate planning is essential for everyone with a family, or assets. Clients have trusted P.M. Lee & Co. for their sound advice in wills, power of attorney and family trusts.



**Melanie Cule**

We believe in providing professional, quality legal advice at reasonable rates. Please contact us to see how we can help you.