



JULY 2016

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### **SELLING TO A DEVELOPER**

John and Mary have been living in Austral for the last 40 years.

They are sick of getting knocks on the door by developers who claim they are doing John and Mary a favour by paying them a lot of money for them to move out. John and Mary are so excited at the thought of having been offered \$4 million that they sign a document agreeing to that arrangement. Along comes another developer and offers John and Mary \$4.5 million, John and Mary have agreed to proceed with the first offer and a contract has been prepared and sent to the purchaser developer.

John and Mary decide to play it safe so they miss out on the extra \$500,000. Had John and Mary obtained legal advice from Meehans they would have had an understanding of their rights and obligations and Meehans could have taken steps to ensure that they did not miss out on extra money. Not only have John and Mary missed out on this extra money, unbeknown to John and Mary the developer has retained 10% of the purchase price and forwarded it to the ATO. John and Mary are at a loss to understand why they did not get that money.

As from 1 July 2016 the vendor has an obligation on selling land for \$2 million and over to obtain an Australian resident clearance certificate from the ATO prior to settling a sale. In the event that they do not do so there is an obligation on the purchaser

to retain 10% and forward it to the ATO. In addition the purchaser has refused to pay an adjustment for land tax and John and Mary are very angry there have been amendments to their obligations regarding land tax to which they were unaware.

Apart from this recent complication there has been a new contract released by the Real Estate Institute. John and Mary wish they had obtained legal advice prior to simply acting on the conveyance.

In order to avoid disappointment do not consider acting for yourself!!! You should obtain professional advice in relation to your disclosure obligations and your rights in relation to ATO obligations and compliance.

Meehans have been undertaking conveyancing transactions for over 20 years and are up to date with the recent changes. Avoid disappointment and instruct Meehans to act for you in relation to your conveyancing.

### **DOES YOUR WILL NEED UPDATING?**

Our firm has been involved in two separate estates both with common facts. In both Estates the deceased was separated from their spouse, the family Law property settlement had been finalised but they were not divorced.

The legal position for the administration of estates in those circumstances is quite clear.

Where a property settlement has been made, that does not exclude the spouse from receiving a benefit from the estate. It is the divorce which acts to exclude a bequest to a former spouse.

In the first estate, the deceased and his wife had no children. The deceased made no will. There had been a property settlement paying out the wife and under the law of intestacy the estate passed to the wife. That estate involved litigation in the Supreme Court of New South Wales initiated by the deceased's family. Finalisation of the dispute took over 12 months and there was a significant legal bill payable by the estate.

In the second estate, the deceased and her husband made Wills approximately 15 years ago. They separated and they received property settlement orders under the family Law act. They did not get divorced and the deceased did not update her will.

After the deceased's death, it became apparent that her husband was entitled to receive the entire estate rather than her adult children. The deceased husband has agreed to renounce his role as executor of the will and to sign a deed of family arrangement to ensure that his children receive their mother's estate which he knew was her wishes. If the husband insisted on his legal rights under the will then he would have been appointed executor under the will and he would have been entitled to receive the entire estate in accordance with the will. The children would then have been in a position where they would have had to commence proceedings in the Supreme Court of New South Wales seeking claims for family provision under the Succession Act.

The legal fees on the second estate will not be excessive and the children will receive their mother's estate without the need for Supreme Court litigation to be commenced.

## **If you are separated but not divorced, have you updated your will?**

Even if these facts don't apply to your circumstances, if your Will has not been updated recently it is worth contacting us to discuss whether or not there have been any changes in your circumstances since your last will was made.

Feel free to contact any of our solicitors to discuss whether or not your Will should be updated.

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