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Lawyers

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Reverse Mortgages: What Are They & The Pitfalls?

Property & Business Team

A Reverse Mortgage is a loan which is accessible by individuals generally over the age of 60, who have equity in their property which they can offer as security to a financier but do not have a regular income, thus are unable to obtain a conventional loan where regular repayments can be made.

The bank will loan a minimal amount, and this will vary depending on the Borrower's age but the general consensus is the older the Borrower, the higher the borrowing power. The interest rates on a Reverse Mortgage loan is likely to be higher than the norm and because this loan does not require repayments to be made, the principal sum and interest compounds rapidly over a period of time. Thus the longer the loan is held, the greater the growth of the loan amount and accrual of interest, which significantly reduces the equity held in the property.

Borrowers may have the option to have an initial sum released to them, and then have further amounts released upon request, which will be favourable, as the additional amounts will not accrue interest until it has been provided to the Borrowers. Unfortunately though, most banks impose a fee each time a further sum is advanced by the bank. There may

also be other hidden costs that Borrowers are not aware of until the loan agreement is reviewed by a lawyer. The bank fees associated with a Reverse Mortgage can also be higher than the norm.

As long as the Borrower/s are not in default of the loan agreement, they can remain in the property for as long as they live. Within 12 months after the Borrower/s passes away or moves out of the mortgaged property, the bank will require the property be sold to recover the outstanding amount owing. This means that should the Borrower have any dependants residing with them, the dependants will be required to vacate the property for the sale. Furthermore, prior to having anyone else reside in the property, whether it be a dependant or perhaps to have the property tenanted, the Borrower will need to seek the bank's written consent prior to allowing this.

Please note that the income generated from the Reverse Mortgage loan, and the reduced equity in the property may affect a Borrower's ability to access aged care and eligibility for pension payments due to the lump sum payment which increases your asset balance. Furthermore, a Borrower may not be able to leave the family home to their children, as there may not be any equity remaining in the property by the time it is to be sold. A Borrower should not be reliant on their prediction that equity in the property will

increase, as it may not, based on previous property market crashes.

A Reverse Mortgage is a loan which is accessible by individuals generally over the age of 60, who have equity in their property which they can offer as security to a financier but do not have a regular income, thus are unable to obtain a conventional loan where regular repayments can be made.

A loan application of this kind should only be applied for as a last resort. It is important to check the terms and conditions to confirm the loan documents provided have a No Negative Equity

Guarantee which ensures you will never owe more than the value of the home and the terms surround that, and there is a Protected Equity Option which will allow you to retain a portion of the value of the property once it is sold.

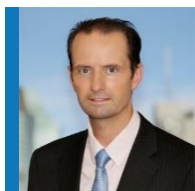
How Can We Help?

We have the legal experience and knowledge to explain the risks contained in your Reverse Mortgage loan, and what costs you will be confronted with whilst obtaining this loan, to ensure there are no hidden surprises waiting for you down the track and that you are well informed before proceeding with a Reverse Mortgage loan.

Contact Us

To speak to one of our experienced lawyers about your Reverse Mortgage loan, call 1800 999 529, email mail@rmolaw.com.au or visit rmolaw.com.au.

Changes To Smoke Alarm Legislation



Duncan Murdoch
Director
Conveyancing

New legislation for smoke alarms came into effect on 1 January 2022. These changes affect landlords and persons wishing to sell their dwelling.

Dwelling is defined as a house, townhouse or unit.

A landlord may not lease a dwelling unless the dwelling is smoke alarm compliant. A seller may not sell a dwelling unless the dwelling is smoke alarm compliant.

Smoke alarms in the dwelling must:-

- Be photoelectric (AS 3786-2014); and

- Not also contain an ionisation sensor; and
- Be less than 10 years old; and
- Operate when tested; and
- Be interconnected with every other smoke alarm in the dwelling so they all activate together.

Smoke alarms must be installed on each storey:

- In each bedroom; and
- In hallways that connect bedrooms and the rest of the dwelling; or

- If there is no hallway, between the bedrooms and other parts of the storey; and
- If there are no bedrooms on a storey at least one smoke alarm must be installed in the most likely path of travel to exit the dwelling.

Smoke alarms must be hardwired or powered by a non-removable 10 year battery or a combination of both may be allowed. The above requirements will apply to all owner occupiers from 1 January 2027 i.e. even if they are not proposing to sell their dwelling.

Are You A Company Director? Please Read!



Roly O'Regan
Director
**Commercial
Litigation**

NEWS ALERT

If you are an Australian company Director, then you must act quickly to apply for the new Director Identification Number (otherwise known as the Director DI).

What is a Director Identification Number?

A DI is a unique identifier that a Director of a company will apply for once and keep forever which will inevitably help prevent the use of false and fraudulent director identities.

Why Do I Need To Apply For The New Director ID?

The main purpose of the DI is to stop phoenixing in Australia by allowing Directors to be traced across companies. It will also prevent the use of false identities being listed as a director. The DI will allow regulators such as ASIC to identify Directors of failed companies who use fictitious identities.

When will applications open?

The deadline for existing Directors to apply is 30 November 2022.

However, Directors appointed between **1 November 2021 and 4 April 2022** must apply within 28 days of their appointment.

Don't Wait!

Any failure to apply for the Director ID before that time may result in fines of over \$1,000,000 for directors of corporations, governed by the *Corporations Act 2001* (Cth) and fines of up to \$200,000 for

directors of indigenous corporations governed by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

When applying for the ID, Directors must produce their MyGov ID and information from two documents that verify your identity (for example, bank documents and ATO Notice of Assessment). The new ID will be attached to a Director permanently, even if they stop acting as a Director or move overseas permanently.

Once you have your Director ID, you can view, update and manage your details online at any time.

What happens if I don't apply for a Director ID?

Under Australian Law, Directors who fail to apply for a

Director ID risk the imposition of criminal or civil penalties, which have been described above. Penalties will also apply for undermining the requirements, such as intentionally applying for multiple Director

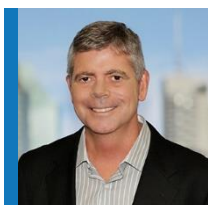
IDs and/or providing false information regarding your identity.

If you are an Australian company Director, then you must act quickly to apply for the new Director Identification Number (otherwise known as the Director DI).

Why you need to contact Ryan Murdoch O'Regan Lawyers

For more information about the Director ID and how we can advise you for all your Commercial and Litigation Law Dispute matters, contact us for advice at Ryan Murdoch O'Regan Lawyers on 1800 999 529, or fill in the enquiry form here and like us on Facebook.

Family Law – A New Case Management System



Tim Ryan
Director
Family Law

Since the Family Law Act 1975 (Cth) (The Act) came into effect the courts have struggled to cater for the diverse and subjective factual situations that are

inherent in each marital dispute after separation. There has always been some difficulty in applying a Legal framework to a set of facts which has evolved over the length of a relationship. The Law in general, as it developed is based on an adversarial system and applied to seek out the facts and determine a fair resolution. "Innocent until proven guilty" is a well-

worn and fundamental principle and remains a solid foundation of our Legal System.

Our principles of law are based on legislation by Parliament and interpretation (of that legislation) by the courts. The Family Law Act and its various iterations has constantly sought to merge the principles of law with the disparate circumstances of a marriage. Further, the premise of resolving the dispute by balancing the arguments of both parties and making a determination is fundamentally challenged by the multiple issues that are brought to the court by the embattled parties that have resolved to end the "partnership" (marriage or defacto) and don't agree how to distribute the accumulated assets. Domestic violence is an issue. The welfare and future care of children is a major issue. Each can influence other aspects in dispute such as financial needs going forward.

The consensus with regard to the practice of Family Law is that it is a work in progress. The overwhelming consensus is that the Practice (not the Principles) of law is flawed when each side take an adversarial approach. Throwing petrol on to a fire is a fair analogy. When the welfare of children become part of the dispute or in fact are the dispute logic and balance are often the first casualties.

It became clear that a more consensual and collaborative method (guided where necessary by Judicial discretion) was necessary. Family Law has evolved as a consequence with an emphasis on Alternative Dispute Resolution such as

Mediation, Conciliation and Arbitration to resolve the matter.

Further, the costs of litigation where a Lawyer is instructed and the necessary provision of infrastructure to accommodate a court process (Court buildings, Judicial Officers, Support staff etc.) became overwhelming. Government funding and the adequate provision of Judges and other judicial support has always been an issue.

As a consequence of difficulties summarized above, the Federal Circuit and Family Court of Australia Act 2020 and the Federal Circuit and Family Court of Australia (Consequent Amendments and Transitional Provisions) Act 2020 came into effect in September 2021. The legislation merged the Family Court of Australia and the Federal Circuit Court of Australia into a single court system (FCFCOA). The purpose of the merger was to streamline the significant backlog of Family related cases and to reduce the time for a judicial decision.

Dispute Resolution (instead of court) has been given a greater emphasis. There is an increased focus on identification of specific issues, assessment of risk and early determination of matters before the court, by:

- Improving early risk identification and safety of children and vulnerable parties;
- Encouraging smarter ways to separate with less acrimony, less cost and more dispute resolution, where it is safe to do so;

- Expecting compliance with court orders;
- Enhancing national access to justice for vulnerable parties and regional communities through the use of technology, and
- Aiming to resolve up to 90 per cent of cases within 12 months.

The Central Practice Direction is extensive and intended as a definitive outline to the parties as well as practitioners as to how a matter is to be prepared and progressed through the Family Court. There are ten core principles which expand on the bullet points above:

Risk

To prioritise the safety of children, the vulnerable and litigants. The purpose is to essentially identify risk at the outset and manage going forward.

Parties', lawyers' and the Court's obligations and overarching purpose

Essentially all parties are mandated to resolve disputes as quickly and as cost effective as possible. The welfare of children will always be a priority.

Efficient and effective use of resources

This relates to the proper and efficient allocation of resources.

Approach to case management

Management of cases by the court is highlighted, including assessment of risk and the emphasis on Alternate Dispute Resolution to reach agreement in appropriate cases.

Importance of Dispute Resolution

Before commencing an action parties are required to make a genuine attempt to resolve the dispute and be proactive in ongoing attempts at resolution. At the least parties are required to streamline and minimise issues to be determined by the court. Clearly if dispute resolution can be applied as an alternative to court then it should be utilised.

Non-compliance

This has been a major problem and the emphasis on enforcement of practice directions intended to progress matters is a welcome requirement.

Lawyer's obligations about costs

This core principle outlines the requirement for parties and their Lawyers to take a sensible approach and endeavour to minimise the time and associated costs of resolution.

Identifying and narrowing issues in dispute

This is an important principle and clearly designed to accommodate most core principles identified by the Practice Direction, in particular:

- All parties must provide full and frank disclosure to assist in efficient resolution of matters before the court or the subject of dispute resolution.
- Interim Applications should only be brought before the court if they can be justified and there is no alternative to resolve the issue in dispute

- All matters that can be resolved through negotiation must be dealt with accordingly

- If required, a single independent expert or assessor should be engaged to resolve specific issues or values (property) in contention

- Parties who act unreasonably or do not cooperate must be made aware that costs may flow as a consequence of their actions or failure to act.

Preparation for hearings

Parties and their Lawyers are to be fully prepared for a court event and cost consequences may flow if they are not so prepared. Parties must provide the court with an outline of issues in dispute and a time estimate.

Efficient and timely disposition of cases

The court has determined to act promptly in hearing a matter and providing judgement in an efficient and timely manner.

Time will tell whether the new rules and Practice Direction are successful in streamlining the court process where matter cannot be resolved informally and a judicial decision is required. Considerable emphasis has been placed on Legal Practitioners to be proactive when representing their client by complying with the strict requirements of the court. More compliance and procedural task are required so as to

accommodate the court and reduce the workload of Judicial Officers and the court administration. Ongoing compliance with the Central Practice Direction and the Family Law Rules at each juncture of the process of negotiation and preparation is required.

Since the Family Law Act 1975 (Cth) (The Act) came into effect the courts have struggled to cater for the diverse and subjective factual situations that are inherent in each marital dispute after separation.

It has been made clear that the court will look to the practitioner as well as the party to ensure compliance and costs may be awarded where it is determined that the practitioner or party has not acted in a manner conducive to an efficient resolution of matters in dispute. The court also has an onus to process matters efficiently and to ensure compliance for that purpose. Clearly the success or otherwise of the Central Practice Direction will require adherence by all participants – The Courts, the Practitioners and the individual party to the proceedings.

Overturing The Transfer Of A House In Queensland



Clark Saint
Special Counsel
Wills & Estates

In Queensland, the Land Titles Office is responsible for the registration of land ownership. We operate on a system that if you are recorded on the certificate of title as the registered owner then your ownership is secure except in very limited circumstances. This means that if you are recorded as the registered owner on a certificate of title and someone is challenging your ownership, the person challenging your ownership will have a difficult task ahead of them to have you removed from the certificate of title.

However it is not impossible, and recently Ryan Murdoch O'Regan Lawyers obtained another successful decision from the Supreme Court of Queensland which overturned the registered owner's sole ownership of a house that the deceased had transferred to the defendant as a joint tenant.

The ownership of land as joint tenants is quite common and means that upon the death of one of the joint tenants, the ownership of the land automatically transfers to the surviving owner subject to the required forms being filed at the Land Titles Office.

In the matter that Ryan Murdoch O'Regan Lawyers was recently involved in one of the deceased's children had taken her father to a lawyer to sign a transfer of the deceased's house to her as a joint tenant at a time when he was terminally ill and very dependent on her assistance. The effect of the transfer of the house to the deceased and to the defendant as joint tenants meant that when the deceased died, the property automatically transferred to the sole ownership of the defendant and was not included in the deceased's estate, which also meant that his two other children did not receive a share of his most valuable asset, the house.

The case against the defendant was helped by the fact that at the time the transfer was signed, the defendant was the deceased's power of attorney and the law in Queensland states that if property is transferred to an attorney whilst they are the current enduring power of attorney, then there is a presumption that the attorney has exercised undue influence to cause the transfer the property to the attorney. There is the opportunity for the attorney to overturn that presumption against them but the defendant was not able to do so in this case and the court held that the defendant held the house on trust for the deceased's estate which enabled the other two children to receive a share of the house by a second court

case known as an application for further provision from an estate.

The conduct of the case took over 2 years and was subject to 2 ½ days of trial with numerous witness being called to give evidence about their knowledge of the health of the deceased person and the character of the defendant. The cost involved was over \$300,000.

It often comes as a surprise to children of the deceased that someone close to them has caused the transfer of a house just into their own name and unfortunately it is

not discovered until a title search is done after the deceased's death. It is easier to try and overturn an improper transfer when the original land owner is still alive as their evidence is readily available. A current title search can be obtained quickly for less than \$30.00.

As mentioned at the beginning of this article, while it is a difficult task to remove a registered owner from a certificate of title, it is not impossible and Ryan Murdoch O'Regan Lawyers has the experience in conducting these type of claims.

What Is The Role Of The Criminal Defence Lawyer In The Justice System?



Ryan Murdoch O'Regan's Criminal Lawyers' can assist you.

The role of a criminal defence lawyer is to represent people who have been charged with a criminal offence. Here at Ryan Murdoch O'Regan Lawyers, we can assist by evaluating the strength and credibility of the police evidence, explaining what you have been charged with and what your options are, including the potential penalties that may arise from such a charge.

The fundamental duties of lawyers can be located in the Queensland Law Society Australian Solicitors Conduct Rules. Lawyers have a paramount duty to the court and the administration of justice and that duty is to prevail where there may be any inconsistency with any other duties.

Other fundamental duties are as follows:

- A solicitor must also:
 - Act in the best interests of a client in any matter in which the solicitor represents the client;
 - Be honest and courteous in all dealings in the course of legal practice;
 - Deliver legal services competently, diligently and

as promptly as reasonably possible;

- Avoid any compromise to their integrity and professional independence; and
- Comply with these rules and the law.

A defence lawyer can be retained to assist in all stages of criminal law proceedings, from an interview with police to the finalisation of a matter at a sentence or trial.

The role of a criminal defence lawyer is to represent people who have been charged with a criminal offence. Here at Ryan Murdoch O'Regan Lawyers, we can assist by evaluating the strength and credibility of the police evidence, explaining what you have been charged with and what your options are, including the potential penalties that may arise from such a charge.

One of the most important roles of a defence lawyer is ensuring that people facing criminal allegations are still afforded fairness in the legal system

despite changes to the system and increased police powers and ensuring that the defendants' rights are not violated during any stage. This is done by appearing in court on your behalf and presenting their case, perusing the evidence provided by police to ascertain the reliability of it and negotiating with the police in relation to the charges or facts of the charge.

As Defence Lawyers, our Criminal Law team will examine the evidence collected by the police, ascertain whether that evidence proves the allegation beyond a reasonable doubt and ascertain whether there is a defence or alibi available to the defendant.

It is important to retain us as your defence lawyer to act on your behalf, even when you are pleading guilty, to ensure that the penalty you receive is appropriate, as these can include fines, community service, probation and even imprisonment depending on both the charge and the nature of the allegations.

Criminal lawyers are an important part of the criminal justice system and assist the court in reaching an end result in the interest of justice. Without criminal defence lawyers, the police powers would remain unchecked which could be detrimental to those charged with a criminal offence.

Contact Us

To speak to one of our experienced criminal lawyers, call 1800 999 529, email mail@rmolaw.com.au or visit rmolaw.com.au.

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