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*quarterly*

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**Issue 30**  
Oct-Dec

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# The Bank of Mum and Dad in Family Law Property Settlements



**Elle Marshall**  
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If you contributed money towards the purchase of a property for an adult child who is now separating from their partner, the Federal Circuit and Family Court of Australia ("the Court") can class these funds as either a **gift**, a **loan**, or trust (**aka joint ownership**). Each class, once established by the Court, will typically result in distinct legal consequences.

## **The consequences of a "gift" from parents**

If the funds are classed as "a gift" and your adult child is going through a family law property settlement, they will often be considered a contribution made by your child to their marital or de facto relationship. This can result in an adjustment in favour of your child, and the amount of this adjustment is determined by the extensive and discretionary provisions of the *Family Law Act* and relevant case law.

However, the Court may also find evidence that demonstrates you intended the funds to be a "joint gift" to benefit both your child and your child's spouse equally. In this case, the Court will likely find that your child and their partner contributed

equally to the relationship by way of this gift, and therefore neither should be entitled to an adjustment in their favour.

## **The consequences of a "loan" from parents**

If the funds are classed as "a loan" they may be protected from a claim by the estranged spouse (whether married or de facto). This means the Court will likely view the funds as another joint loan of the relationship and would typically (but not always) find that both parties are liable for this "joint loan". All joint liabilities must be paid before a property settlement can be reached and before a settlement split can be determined and distributed to the parties.

## **The consequences of property held by a child "on trust" for a parent**

If the Court is satisfied there is evidence that proves that the intention, at the time the transfer of funds occurred, was for the parents to be "joint owners" of the property, these funds may also be protected from an estranged spouse's claim under the Family Law Act. This is irrespective of whether the parents are registered as an owner on the title search. If they are registered on title they are called a "legal owner" or "registered owner", if not, they can be "equitable owner".

If a trust is declared by the Court, and joint ownership is therefore established, the parent could also be entitled to a proportion of the capital growth in the property that is reflective of their share of ownership. This could potentially exclude an even higher proportion of assets from forming part of the pool of property available for division between the parties to the relationship.

**Before opening the bank of Mum and Dad, it is important to obtain legal advice to ensure the funds handed over are treated as you intended.**

#### **The presumption of advancement**

Traditionally, when a parent contributed funds to their child the Court presumed (without evidence to the contrary) that such funds were first and foremost "a gift". Now the Court is also prepared to find the funds are "a conditional gift". For example, a gift that is conditional on a child providing the continuing right for their parent to reside in the property.

To rebut this presumption, evidence is required to prove that the funds were not intended as "a gift" and rather to be "a repayable loan" or "a trust" held by the child for the benefit of the parent.

#### **Always obtain legal advice**

Before opening the bank of Mum and Dad, it is important to obtain legal advice to ensure the funds handed over are treated as you intended. Particularly, in the event that your child has the displeasure of being a party to a future family law property settlement.

If funds have been provided either:-

- (a) by you to your child;
- (b) to you by your parents; or
- (c) to your spouse by their parents,

we strongly recommend you obtain legal advice with respect to how these funds will be classed and treated by the Federal Circuit and Family Court of Australia.

#### **Contact Us**

To speak to one of our experienced family lawyers call 1800 999 529, email [mail@rmolaw.com.au](mailto:mail@rmolaw.com.au) or visit [rmolaw.com.au](http://rmolaw.com.au).

## **Changes to Residential Tenancy Laws**



**Duncan Murdoch**  
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Three key changes for residential tenancies came into effect on 1 October 2022.

**Landlords and tenants have a wider**

### **range of specific reasons for ending a tenancy**

Landlords can no longer end a tenancy agreement without a specific reason (formerly known as without grounds). Reasons for a landlord ending a tenancy agreement include:-

- Tenant's un-remedied breach
- End of a fixed term agreement
- The tenant has abandoned the property
- The property is being sold
- The property is partly or wholly destroyed or can no longer be used as a dwelling
- The property requires significant repair or renovation
- There is planned demolition or renovation
- The landlord requires the property for his/her occupation
- The sole tenant dies
- The tenant fails to comply with an order of the Tribunal
- The landlord requires the property for a use other than residential property
- The property has been compulsorily acquired by an authority

Other reasons may apply in specific circumstances.

Reasons for a tenant to end a residential tenancy include:-

- Landlord's un-remedied breach
- The property is partly or wholly destroyed or can no longer be used as a dwelling

- Death of a co-tenant where it would be impractical or would cause excessive hardship for the surviving co-tenant to continue
- The sole tenant dies
- The property is to be sold (conditions apply)
- The condition of the property
- The landlord fails to comply with a repair order
- The landlord fails to comply with an order of the Tribunal
- The property has been compulsorily acquired by an authority

Other reasons may apply in specific circumstances.

### **A framework have been introduced to support negotiations for renting with pets**

A pet is a domesticated animal or an animal which is dependent upon a person for the provision of food or shelter and does not include a working dog or an animal prescribed by regulation not to be a pet.

Tenants must seek landlord approval to keep a pet at rented premises.

Landlords may refuse the request based on specific reasons under the legislation or grant the request with reasonable conditions as agreed with the tenant.

The landlord must respond to the tenant's request within 14 days otherwise the request is deemed to be approved.

### **Repair orders have been introduced as an additional remedy for tenants to**

### **have repairs addressed in a timely manner**

Landlords and tenants are encouraged to discuss repairs and a realistic timeframe for repairs to be carried out.

### **Landlords and tenants have a wider range of specific reasons for ending a tenancy**

If self-resolution is unsuccessful then a Notice to Remedy Breach continues to be an option.

Tenants now have a further remedy in applying to Queensland Civil and

Administrative Tribunal for a repair order for routine and emergency repairs.

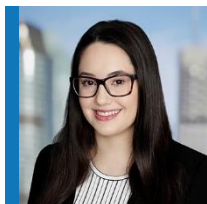
If granted, a repair order will continue until the works have been completed and does not expire when a tenancy agreement ends nor if the property is sold.

The above is merely a brief overview. The legislation deals with the issues in greater detail. Each case will need to be considered on its own merits.

### **Contact Us**

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## **Has Your Best Four-Legged Friend Been Declared Dangerous or Menacing By Your Local Council?**



**Lejla Pehlivanovic**  
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Criminal Law

It can be a stressful time when you are contacted by the authorities with accusations that your dog is dangerous. It is understandable to become extremely upset in these times and forget that there are avenues available to you to fight any fines or applications your local council issues in relation to your dog's alleged behaviour.

Under the *Animal Management (Cats and Dogs) Act 2008 (QLD)*, a dog can be declared dangerous if it has seriously attacked or caused fear to a person or another animal, or if an authorised person believes that it may do either of those things in the future, after having regard to the dog's behaviour. Similarly, a dog can be declared menacing if the above apply, except the attack was not of a serious nature (i.e. it did not cause serious injury such as bodily harm or death).

If your local council decides to declare your dog either dangerous or menacing,

they have to serve you with the appropriate notice which will state why they have decided to take this course of action.

There are legislated conditions you must ensure you have fully complied with, within 14 days of receiving the notice, which include matters such as registering your dog and paying the correct fee, ensure your yard meets the enclosure requirements, ensure your dog wears a muzzle at all times when not at home and display correct signage at your home. You will likely have regular unannounced inspections to ensure these conditions are being adhered to. Failure to follow the conditions may result in large fines.

We can write to your local council on your behalf within 14 days of receiving the notice to explain why your dog does not satisfy the definition of either dangerous or menacing and they will consider removing the notice. If they do not, we can

apply on your behalf to the Queensland Civil and Administrative Tribunal ("QCAT") for a review of the council's decision, and if that is rejected, you have avenues to appeal the decision through QCAT.

If your dog has attacked another person or animal, your local council may also apply to seize your dog or apply to destroy your dog. However, a decision to destroy a dog is a major one and the council does not make this decision lightly; it wants to ensure that the community is protected and not at risk of harm.

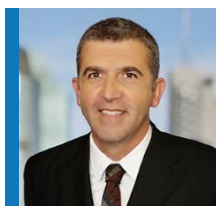
If you require legal advice regarding your dog, the Team at Ryan Murdoch O'Regan can assist you.

### Contact Us

Speak to one of our expert criminal lawyers on 1800 999 529, email [mail@rmolaw.com.au](mailto:mail@rmolaw.com.au) or visit [rmolaw.com.au](http://rmolaw.com.au).

**If your local council decides to declare your dog either dangerous or menacing, they have to serve you with the appropriate notice which will state why they have decided to take this course of action.**

## Payment of Estate Debts



**Clark Saint**  
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In the administration of most estates, the question will arise how are the debts of a deceased person to be paid? If the estate has either cash or other assets that are sufficient to pay the estate's debts, then it is a solvent estate and section 59 of the

Succession Act 1981 Queensland applies. Section 59 sets out the order in which a deceased's person's assets are to be used to pay their debts. In general terms Section 59 provides:

1. That any assets of the deceased specifically identified in the will for the payment of debts will be used first.
2. Next will be those assets that fall into the residue of the deceased's estate. This will be all of the assets of the deceased that have not been specifically gifted in the deceased's will.
3. If after using gifts specifically identified for the payment of the deceased's debts and using the residue of the deceased's estate, there still remains unpaid debts of the estate, then gifts that have been specifically made in the will, will be the next category of the estate's assets to be used for the payment of estate's debts.
4. If after assets in categories 1, 2 and 3 above have been used there still remains unpaid debts, then *donationes mortis causa* can be called upon to pay the remaining estate's debts. *Donationes mortis causa* are those gifts that the deceased person made prior to their death.

It is important to note that in calculating the payment of the deceased's debts, it is not a matter of the executors or

administrators simply saying that we only have \$200 but we have \$400 worth of debts, therefore we will spend the \$200 paying 100 percent of the following debts and the other unpaid debts will miss out. Instead, what occurs is a *pro rata* calculation so that the amount of money available to pay the debts is applied on a *pro rata* basis.

Another important issue is the payment of monetary gifts, these are called pecuniary legacies and are dealt with in section 60 of the Succession Act. Section 60 states that pecuniary legacies shall be paid out of the residue of the estate after payment of the

**In the administration of most estates, the question will arise how are the debts of a deceased person to be paid?**

estate's debts. A deceased person can make a specific gift of money in their will and specifically identify a source from where the monetary gift is to be paid from. The deceased person should make sure that they have sufficient funds in the specifically identified source for the payment of the specific monetary gift or the gift will fail. However, if there is a monetary gift that does not specifically state where it is to be paid from, then section 60 provides that it is to be paid from the residue of the deceased's estate after payment of the estate's debts.

This means that executors and administrators will need to make sure any monetary gifts that have not been

identified for payment from a specific source are paid from the residue of the deceased's estate (after payment of the estate's debts) before they distribute the residue to the beneficiaries of the residue of the estate. If an executor or an administrator fails to do this, then they can be held personally liable for payment of

the monetary gifts they did not pay from the residue of the estate.

### Contact Us

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## Do You Have A Tax Debt?



**Roly O'Regan**  
**Director**  
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It is not surprising that the last few years have been extremely difficult for many businesses and people due to the Covid-19 pandemic (lockdowns, mask wearing and also the considerable disruption for your business). Therefore it is totally understandable that many organisations

and individuals may have fallen behind on meeting their tax obligations. However, with the severe impacts of Covid-19 finally diminishing we are now seeing that the Australian Tax Office ("the ATO") is taking steps to start recovering the many billions of dollars in tax debt.

### Our Top Tips with negotiating with the ATO

#### 1. Start early

The ATO is committed to resolving disputes early and to that end will explore all means necessary to achieve that outcome. If a tax debtor takes the initiative or to use the cricket analogy "get on the front foot" to address the taxation debt, you will find that there is a much better outcome than when you ignore your obligations and wait for the ATO to take action (which can often be swift).

#### 2. Open and transparent communication

The ATO encourages people and companies to contact them to discuss options available for resolving a taxation debt. When there is ongoing, open

### Our Top Tips with negotiating with the ATO:

- Start early
- Open and transparent communication
- Make sure your records are up to date
- Beware of your options
- Make sure or attempt not to pay other debts at the expense of the ATO



communication between the tax debtor and the ATO there is the strong possibility that there will be efficient outcome for all concerned.

### **3. Make sure your records are up to date**

Before contacting the ATO in relation to a taxation debt, the tax debtor should review their records and ensure everything is up to date including any outstanding lodgements for the ATO, as well as its own financial records. Obviously, we can contact them on your behalf.

It has been our experience that a payment arrangement is less likely to be considered unless all lodgements are up to date and the ATO will likely want to ensure what is being offered is not only able to be complied with but also that you have the capacity to meet that payment arrangement.

### **4. Beware of your options**

All tax debts are payable in full when due. **However**, the ATO will consider assisting you in discharging your taxation debts and has the power to consider the following:

- that they consider reducing your debt by a remission of the general interest charge (this can often be a substantial amount that can be reduced);

- Entering into payment arrangements;
- Deferring the time for payment;
- In limited circumstances apply for a release of your tax debt (you cannot be released from GST, PAYG withholding or Superannuation for your staff.); and
- Accepting a settlement offer

### **5. Make sure or attempt not to pay other debts at the expense of the ATO**

If the ATO sees other creditors as being paid in priority they will be less likely to be lenient to you.

#### **Key Takeaway**

If your tax debt is out of control or has the possibility to become out of control, you may need to investigate a restructure.

Here the team at Ryan Murdoch O'Regan can assist you with the most effective options to reshape your business (or your individual situation) so your creditors are satisfied and you can continue to operate and hopefully flourish and prosper.

#### **Contact Us**

To speak to one of our experienced commercial litigation lawyers call 1800 999 529, email [mail@rmolaw.com.au](mailto:mail@rmolaw.com.au) or visit [rmolaw.com.au](http://rmolaw.com.au).

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