

Providing
legal solutions
for life

Divorcing when separated under the same roof

Scott and Fiona have been married for 8 years and have decided that they would like to separate and divorce. The parties still remain living separately under the same roof. What is required for Scott and Fiona to divorce?

In Australia, a divorce can be obtained where parties have been separated for at least 12 months, the marriage has broken down irretrievably, and there's no chance of reconciliation. An Application for Divorce can either be filed by the parties jointly, or by one party separately.



In this issue...

Divorcing when separated under the same roof

Self-Managed Super Funds

Extending Consumer Unfair Contract Term Protections To Small Business

The Removable Granny Flat

Client FUNction

FastFACTS

A couple who is separated and still living under the same roof can apply for a divorce provided they satisfy the above requirements, but will also require Affidavits to prove that the marriage is over.

Feel free to contact our Family Law team on 9870 9870 for some initial advice.

Did you know...

If you work in the city, our Melbourne office is ideally positioned to meet your legal needs. For a convenient lunch time appointment or consultation, give us a call.

If you would like to receive an electronic version of Legal Insight, please:

- send an email to office@hutchinsonlegal.com.au
- call Tristan Tottenham of our office on **9870 9870**
- write to us at PO Box 450, Ringwood 3134

Words to the Wise

“Let the word: Australian! Dignify the lowliest man.”

Arthur Bayldon

Self-Managed Super Funds

Obtaining a Loan for Investment Properties

Borrowing money for investment purposes using a self-managed superannuation fund (SMSF) can have significant benefits and tax concessions but there are strict requirements. These are as follows:

1. Correct SMSF Structure

A Bare Trust needs to hold the property on trust for the SMSF as the SMSF cannot be registered on the Title.

2. Loan Pre-Approval

Avoid potential default on the purchase by ensuring the loan is approved prior to signing a contract.

3. Choosing Property

The property must be purchased for the sole purpose of providing retirement benefits to the SMSF and therefore its members. Members or their families cannot live in the property.

4. Purchasing

Ensure the name of the purchaser is correct to avoid further tax implications in remedying any errors.

If you would like to learn more about SMSF investment properties loans, you can read the full article on our website at <http://hutchinsonlegal.com.au/self-managed-super-funds>

Extending Consumer Unfair Contract Term Protections To Small Business

The Australian Consumer Law currently contains protections for consumers against unfair contract terms in standard form contracts. The Federal Government has now extended these protections to small businesses.

The new legislation was passed into law in October 2015 and will be enforced from later this year. This stems from concerns that small business operators, like consumers, have very little bargaining power when presented with "take it or leave it" contracts from large suppliers or customers. Additionally, they do not always have the expertise or knowledge to fully comprehend all the terms of the contracts they are signing.

In this environment, larger businesses sometimes include terms in their standard contracts which place the smaller, more

vulnerable party to the transaction at a considerable financial disadvantage. The new legislation aims to remedy such situations with courts being able to strike out terms in a small business contract that are considered unfair.

To be considered unfair, a term must cause a significant imbalance in the parties' rights and obligations, cause detriment to a party if it is relied upon, and not be reasonably necessary to protect the legitimate interests of the party seeking to rely on it.

Businesses which have fewer than 20 employees will benefit from the new protections for contracts under the amount of \$1,000,000 (or for contracts under \$300,000 which have a duration of less than 12 months). Some transitional provisions apply.



For further information feel free to contact our office.

The Removable Granny Flat

Granny Flats are also known as Removable Units, but in 'Council speak' they are Dependant Persons Units ("DPU"). According to Knox City Council:

"A dependent persons unit is described as a movable building on the same lot as an existing dwelling and used for a person dependent on a resident of the existing dwelling. If the dependent persons unit is used for this purpose, a planning permit is not required unless located within a Bushfire Management Overlay). The unit must be removed once the dependent relative use no longer exists."

Other Councils treat DPU's in differing ways. These treatments range from "removal of the movable building once the dependent person is no longer a dependent" (Greater Shepparton), to decommissioning of the kitchen and re-classifying the building as an addition (Knox Council), to requiring the owner, as a condition of the Planning Permit (if they have actually applied for it) to agree

to remove the building once the dependent person no longer resides there (as they would then be in breach of the Planning Permit) (Yarra Ranges Council).

The concern is that there are a number of building firms advertising their expertise in the construction of DPU's, but they usually fail to advise prospective owners that they should clarify with the Council as to what will be the situation when the DPU is vacated.

Given the above, a DPU at the back of an existing property may actually devalue the worth of the property. Consider the issue where a buyer of the property is required to have the DPU removed as a result of it no longer being occupied by a dependent person.

If in doubt when building a "granny flat", ensure that you clarify with the relevant Council what the effect of the dependent person leaving will have on the unit. Further, be sure that you tell us when you are considering purchasing a property with a DPU.

Client FUNction

You are invited to:

Movie: **'The Lady in the Van' and light refreshments**
Venue: **Hoyts, Eastland, Ringwood**
Date: **Wednesday, 2 March 2016**
Time: **6.30pm arrival for a 7pm start**
RSVP: **9870 9870 or**
tristan@hutchinsonlegal.com.au



Con Nottas 



HUTCHINSON LEGAL

per Con Nottas & Grant Hutchinson

Tel: **(+61 3) 9870 9870**

Email: office@hutchinsonlegal.com.au

PO Box 450, Ringwood 3134

FastFACTS

1808

The first recorded Australia Day celebrations were held to mark twenty years since Captain Arthur Phillip raised the flag at Sydney Cove.

19 April 1984

Peter Dodds McCormick's *Advance Australia Fair* was officially declared Australia's national anthem by the Governor-General

23,781,200

The population of Australia as of 30 June 2015

Visit us at hutchinsonlegal.com.au

Clients should not act only on the basis of material contained in this newsletter because the contents are of a general nature only and may be liable to misinterpretation in particular circumstances. Changes to legislation can occur quickly. Do not act on any of the contents of this newsletter without first obtaining specific advice from a lawyer.