



## NEWSLETTER – AUTUMN 2015



### **RUSSELL COCKS - Mentor**

Russell has been nominated as MENTOR OF THE YEAR for 2015 at the Law Institute of Victoria. This nomination acknowledges Russell's many years as an advisor to lawyers around Victoria and the extensive seminar series that Russell conducts to help lawyers satisfy their Compulsory Professional Development obligations.

### **POWERS OF ATTORNEY - Changes**

We prepare many Powers of Attorney for clients and rarely do we experience problems, however Elder Abuse is perceived to be a problem in the wider community. This often occurs as a result of misuse of Powers of Attorney and the Government has conducted an inquiry and new legislation comes into effect on 15 September 2015. The result will simply be more complications and longer forms but we expect that we will continue to be able to provide our efficient service to our clients at the present fees.

### **SUCCESSION LAW**

When a person makes a Will they expect that their wishes will be respected. However it is common for Wills to be contested by dissatisfied potential beneficiaries, particularly adult children who are left out of the Will.

The law changed on 1 January 2015 with an intention to make it more difficult to contest Wills, however it is uncertain how these changes will be interpreted by the Court and how much more difficult it will be to defend such claims.

Local Lawyers represent both Executors seeking to enforce the Will and disappointed beneficiaries. We always encourage our clients to take a conciliatory approach to these disputes as the costs involved, both financial and emotional, can quickly escalate.

## **ELECTRONIC CONVEYANCING**

The much awaited Electronic Conveyancing system is due to be available for general use from 1 July 2015. Local Lawyers has embraced the technology and will be able to complete settlements for clients electronically but the issue will be whether it is in the best interests of clients to do so.

Electronic Conveyancing will have no perceptible benefit for individual clients and will increase the cost on conveyancing by adding a fee of approximately \$100 each for buyer and seller and \$30 to obtain or discharge a mortgage. This total of \$260 is likely to be passed on to purchasers with no reciprocal cost saving. It is likely that the BIG BANKS will push purchasers into Electronic Conveyancing as the banks own the system and will make substantial backroom savings from the process. We expect that this will take 1-2 years to filter through, after which time Electronic Conveyancing will effectively be compulsory. In the meantime we will consult with our clients before incurring any additional expenses.

### Verification of Identity

One change that will immediately take effect is the need for lawyers to identify their conveyancing clients more formally than at present. From 1 July 2015 we will need to have a face to face meeting with each client to identify the client before undertaking a sale, purchase or mortgage. This identification will be similar to a 100 point check involving production of a driver's licence, passport or similar documents. Fortunately we already know many of our clients and this will be a simple exercise that we can begin to undertake in coming months, but it will still add time to the process. We do not intend to increase our fees, despite this additional burden. However there will be some clients who are far-distant from our office and it may be necessary for those clients to attend a local Post Office to complete the identification process (at a cost to the client). Like all changes, Electronic Conveyancing will have positives and negatives. In the short term the negatives are likely to be more prevalent.

## **FENCES ACT**

Neighborhood disputes often arise from disputes about the location of fences. The Fences Act is designed to provide a procedure for the replacement of dividing fences but a 2014 review resulted in the Act being extended to allow Magistrate's Courts to make decisions about whether the location of a fence for more than 15 years has resulted in the possessing owner being able to refuse a request to re-position the new fence on the title boundary, thus allowing for the new fence to be constructed on the line of the old fence and not on the old title boundary.

## **OWNER - BUILDERS**

An owner of land who constructs or renovates a dwelling or a commercial property on the land is required to obtain a Condition Report identifying any defects in the structure if the owner wishes to sell the property within six and a half years of undertaking the construction work. We can assist clients in obtaining these reports and, if necessary, also obtaining Owner Builder Insurance.