jackson lalic
LAWYERS

SPEED.VALUE.QUALITY.COMMITMENT

October 2008 Newsletter

>> FEATURE ARTICLE — SUPERANNUATION LAW CHANGES

Superannuation Funds can borrow money to increase their assets.....

Historically Superannuation Funds have been restricted from borrowing to acquire direct property assets. Recent amendments to section 67 (4A) of the Superannuation Industry (Supervision) Act 1993 have created an amendment to this general rule.

Superannuation Funds can now borrow to increase assets. The growth in assets will be within the Superannuation Fund where taxes are presently at a maximum of 15%.

Any property can be purchased using these arrangements that would be an acceptable investment in the Superannuation Fund.
A borrowing by a Superannuation Fund is done in the following way:-

A Trust is established that has the Superannuation Fund as its sole beneficiary. The corporate trustee may have the members of the Superannuation Fund as directors and shareholders. In this way the members retain complete control over the trust and the assets.

The asset intended to benefit the Superannuation Fund is selected and acquired by the trust through debt and equity provided by the Superannuation Fund. Since the Superannuation Fund is the intended beneficiary and provides the acquisition funds ad valorem stamp duty is not payable when the asset is ultimately transferred to the Superannuation Fund once any debt is repaid.

The debt finance is provided by the Superannuation Fund with security being provided by the trust asset. This is a non recourse loan but there is no prohibition on members of the Superannuation Fund providing personal guarantees or additional security to fill in any lenders security gap.

Once the asset is acquired and the loan is in place the debt is reduced over time by injections of money from the Superannuation Fund. Any income remains in the fund and taxation benefits apply.

After the debt is repaid and the security discharged the asset can be transferred back to the Superannuation Fund as beneficial owner at nominal stamp duty.

Winner first prize Lightning Ridge Arts and Craft Council, Spring Exhibition 2008, sponsored by Jackson Lalic Lawyers - Junior Youth 10-14 years - "Possums" by Samuel Ferguson.

The articles contained in this newsletter are in the nature of general comment only. The articles are neither intended nor should be taken to be, advice in respect of any particular matter. Advice should be sought in relation to particular circumstances.

We welcome feedback about the newsletter items and if you wish to comment please do so at **info@jacksonlalic.com.au**

If you would like to receive our newsletter electronically please go to **www.jacksonlalic.com.au** and enter your details on the subscribe to an e newsletter page.

jackson lalic
LAWYERS

>> THE MAGNA CARTA

Can A Borrower Rely On The Magna Carta To Stop A Finance Provider Taking Possession of Land…

In an effort to hold on to property, borrowers sometimes raise provisions in the Magna Carta. The Magna Carta was issued in England in 1215 and is a very early charter of individual rights.

A clause often relied on by borrowers is the following:

'No man shall be….disseized of his freehold….except by the lawful judgment of his peers or by the law of the land.'

This argument was recently raised in the case Pepper Finance Corporation Ltd v Williams. Unfortunately for Mrs Williams, as has happened in the past, the Judge found that the Magna Carta did not assist the borrower and Judge Campbell reminded everyone in his judgment, that the Magna Carta leaves open the possibility that a person may be disseized of his freehold not only by lawful judgment of his peers, but also by the law of the land. The Judge then referred to section 85 of the Supreme Court Act 1970 which makes provision for all proceedings in the Court to be tried without a jury unless the Court otherwise orders.

While showing imagination and flair are good things, sometimes the result is not as we would most wish.

>> MR PHUONG NGO

Jackson Lalic Act For Mr Phuong Ngo At An Enquiry Into His Conviction For The Murder Of Mr John Newman.

Mr Justice Patten was appointed by the Chief Judge of New South Wales to enquire into the conviction of Mr Phuong Ngo for the murder of Mr John Newman in 1994. Mr Ngo has been in prison for 10 years.

Mr Ngo was the first witness at the enquiry and commenced his evidence on 8 October 2008.

Mr Peter Hastings QC leading Miss Rachel Pepper has been briefed by Jackson Lalic. Mr Faris Shehabi is attending to the many day to day aspects of representing Mr Ngo.

>> LIGHTNING RIDGE SAFE HOUSE

Jackson Lalic supports the efforts of volunteers at Lightning Ridge to provide emergency housing…

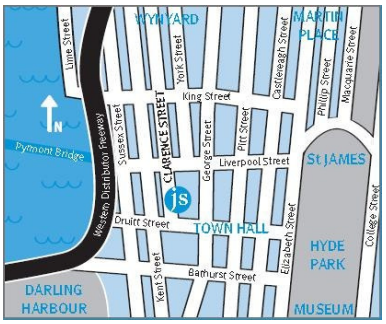
In late September 2008 Yvon Gatineau represented Jackson Lalic at the Lightning Ridge Annual Art & Craft Competition.

While in Lightning Ridge he met the people and clients of the Neighbourhood Centre and learnt about their work with families in crisis. The Neighbourhood Centre provides safe housing for families and others for up to six months to enable them to reconnect and reintegrate into the community. The work to manage these houses and provide support for those in need is mostly done by volunteers.

For this work there is a great need for sheets, blankets, doonas, towels and all toiletries. Jackson Lalic is supporting Yvon's effort to provide these much needed items.

If any of the readers of this newsletter are willing and able to assist with any items they can be sent to Jackson Lalic. Donations can also be made – cheques should be made payable to the Yawarra Weamei Women's Group Incorporated. (Unfortunately the Group does not have tax deductible status). We will ensure that all donations are delivered to the Group.

The people of Lightning Ridge greatly appreciate all help given to them.



Jackson Lalic Lawyers
Level 7, 217 Clarence Street, Sydney, NSW, 2000
T: (02) 9262 1770 F: (02) 9262 1771 DX: 13132 Sydney West
Post: PO Box Q245 Queen Victoria Building Post Office Sydney 1230.