



Dixie Ann Middleton & ASSOCIATES

Family Law & Estate Administration

Welcome to the winter edition of our Newsletter – *Yours, Mine, Ours*

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June 2017

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Please note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

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Firm News

We've been busy here at Dixie Ann Middleton & Associates over the last few months. Here is a recap of the events we have attended.

JATL Beyond Eagle Street Drinks

This was a great event held by the University of Queensland Justice and the Law Society providing information to students about careers in boutique and mid-tier firms, government and in-house legal departments.



SEBCC Drinks at Dusk

The South East Brisbane Chamber of Commerce held a networking evening, offering an opportunity to mingle with other local businesses. For more information about the SEBCC's next event, visit their [website](#).

FLPA Early Career Lawyer Workshop and Wine Tasting

Amara attended this very informative workshop organised by the Family Law Practitioners Association, followed by some delicious food and wine with fellow members of the profession.

Mulcahy Ryan Movie Night

Emma attended a private screening of the new movie, Don't Tell hosted by Mulcahy Ryan Lawyers. This was an excellent film about a young woman who fought back after enduring sexual abuse at a prestigious private school with the help of her dogged and determined local lawyer.

Pilot Cocktail Evening

Emma and her Husband, Alan attended the Gallery of Modern Art for a fabulous function hosted by Pilot Chartered Accountants at the Marvel: Creating the Cinematic Universe exhibition.



Upcoming Events

Morningside Festival

The firm will once again be at the Morningside Festival this year. This is a fantastic local event and we hope to see you all there! We have an exciting day organised at our stall, with a "Catch a Quacker" competition and awesome prizes up for grabs!



The Festival will be held on Sunday, 30 July 2017 from 9am to 3pm along Thynne Road in Morningside. For more information, please visit the Festival's [Facebook page](#).



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Family Law & Estate Administration

Here are the answers to some interesting questions concerning property, parenting and estate administration issues.

How does the Court determine the ownership of a pet?

An issue that can arise in property matters is the question of which party owns and should, therefore, keep a pet. Animals are classified as chattels and the Court determines their ownership as an issue of ownership of property.

In the 2016 case of *Downey & Beale*, the only outstanding issue to be decided by the Court was the ownership of a dog. Both parties asserted that they were and had always been the dog's owner. In deciding that the Wife was the owner of the dog, the Court considered the following facts:

1. The \$300 fee paid for the dog's purchase was paid by the Husband, however, payment of a fee does not, of itself, determine ownership;
2. Prior to marriage, the Wife found the dog online, went with the Husband to purchase the dog and took the dog home with her to her parents' house (where the Husband and Wife resided with the dog from the date of their marriage until separation);
3. The Wife paid for the dog's vaccinations, operations, food and accessories and was named as 'owner' on invoices from the vet;
4. Following separation, the dog lived with the Wife and she thus had possession of the dog; and
5. The Husband registered the dog in his name 8 months after separation and in circumstances where there was clear notice of a claim of ownership by the Wife, such that the Court declined to draw an inference that the registration demonstrated ownership by the Husband.

The Court declared that the Wife was the owner of the dog and ordered the Husband to transfer the dog's registration into the Wife's sole name. You can read the full case [here](#).

Will the Court make Orders in relation to teenagers?

Although the Court is able to make Orders in relation to the parenting arrangements for a child up until they reach the age of 18, the reality is that teenage children will often 'vote with their feet' and decide the time they spend with each of their parents, if any.

However, the protracted litigation in the matter of *Bondelmonte & Bondelmonte* is an example of where the Court has been required to make Orders in relation to teenaged children. The children in this matter would now be (or be very soon turning) 18 and 16. Despite this, the litigation history of this matter is:

1. 25/06/2014: final parenting Orders made by the Court;
2. Mid-January 2016: children visit father in US for two week holiday;
3. 01/02/2016: father retains children;
4. 08/03/2016: Order is made requiring the children to be returned to Australia ("return Order");
5. 08/04/2016: Full Court dismisses father's appeal against return Order;
6. 13/12/2016: High Court dismisses father's appeal against return Order;
7. 22/12/2016: Court dismisses paternal uncle's application to be appointed case guardian;
8. 29/03/2017: Court dismisses father's application to suspend return Order.

On the most recent occasion that this matter came before the Court, an Order was made requiring the parents to do all things necessary to cause the children to return to Australia for the purpose of participating in Family Report interviews. A Family Report assists the Court in determining what Orders should be made in relation to arrangements for children. However, in this case, the utility of that process is questionable, given the current age of the children. You can read the full case [here](#).

Can you charge for being an Executor?

There is no automatic entitlement to executor's commission. An executor is generally expected to act gratuitously and, in most cases, will – especially where he or she is also a beneficiary.

However, pursuant to section 68 of the *Succession Act 1981* (Qld), the Court may authorise the payment of remuneration or commission to an executor of an estate for his or her services as personal representative.

An example of a case where the executor's claim for commission was refused is the 2016 case of *Re Buckingham*. The executor in that case was one of three adult children of the testator. He originally claimed commission of \$120,000, although he later reduced that claim to \$101,976. The executor claimed that he undertook approximately 93 hours of work. On the basis of that estimate, his revised claim converted to an hourly rate of \$1,096.

In dismissing the executor's application, the Court found that most of the administration work had been completed by professionals who had charged fees, such that it was inappropriate and unreasonable to expect the work to be remunerated twice from the estate. There had also been significant losses caused by the executor in his administration of the estate, difficulties caused by him as a result of his failure to account properly and claims relied on by him that did not relate to the administration of the estate. The executor had claimed for a significant amount of time for work done for his own benefit and had failed to administer the estate in a timely and cost effective manner. The Court concluded that there was no basis for the executor receiving even a small amount of commission. You can read the full case [here](#).