

## *Who's Knocking ... The Uber Driver or the Airbnb Tenant?*

Imagine the scenario. You have just bought your new dream home, moved in and settled and there is a knock on the door. It can't be the Uber driver, because you didn't call one. However, it could be the Airbnb Tenant you did not know about.

When selling a residential property in Queensland, the Seller is required to disclose any relevant tenancy, which will be in place at the time of settlement. Thus the Buyer takes the property subject to that tenancy. That is, the Buyer can move in only when the disclosed tenant vacates.

However, what is the situation where a Seller has taken the opportunity to rent out all or part of their house on Airbnb? Could you get a knock on the door at your new home, from someone who has previously booked all or part of a house on Airbnb? This is currently becoming an increasingly vexed question in an increasingly unregulated industry. The simple answer is "No".

Unless a tenancy is disclosed in the Contract, then the Buyer of the property is not obliged to honour any rental obligations.

So when the knock comes at the door, let's hope it is the Uber driver who has come to take you to a party and not the undisclosed Airbnb tenant who was not noted by the previous owner in the Contract.



## **"Will" you be prepared?**

One of the most important documents you will ever make is your Will. Regardless of this fact, people are often somewhat hesitant to make a Will thinking it is morbid or unlucky. We cannot disagree more. Making a Will is good planning and can prevent unnecessary distress at an already difficult time for your family and friends.

A Will sets out your wishes for the distribution of your property. It also appoints executors to carry out your wishes, and guardians to care for under aged children and sets out any specific gifts which you may require.

Should you die intestate (ie without a Will), the Rules of Intestacy will apply to your estate and your property will be distributed in accordance with the law and not your intended wishes.

If you already have a Will, it is important to update your Will when life changing circumstances arise, such as, marriage, separation or the birth of a child.

At Porta Lawyers we strongly encourage all of our clients to ensure that their Will is up to date. Should you wish to discuss this matter with us, please feel free to contact either Giovanni Porta or Leanne Bourrel of our office on Tel: (07) 3265 3888 or by email to [leanne@portallawyers.com.au](mailto:leanne@portallawyers.com.au)

## **What can I do when someone owes me money?**

In the course of running a small business, it is not unusual for your account customers to fall behind in the payment of their account. As with most businesses, the first thing you do is contact the debtor to remind them that they are late paying their account. Sometimes your customer has genuinely forgotten and the 'reminder' is appreciated.

A problem develops when the 'reminder' goes unheeded. What are your options? You can send another reminder; or you can contact Porta Lawyers. We can assist you by writing to the debtor and sending that person or company a 'letter of demand'. More often than not, this letter prompts the person to pay their overdue account. For \$200 + GST, this fee can be a good investment.

It is important that you keep a record of your tax invoices and the times you have contacted the debtor. If you phoned to remind them of payment, make a note of the date and time you made that phone call. If you sent an email, keep the email. These records are essential if you need to take the next step – filing a Claim with QCAT or with the Magistrates Court.

If you need assistance in recovering outstanding accounts, please do not hesitate to contact Warren Keir by email on [warren@portallawyers.com.au](mailto:warren@portallawyers.com.au)

## Childcare Centres and Subpoenas

There are three main types of Orders which centre Directors will need to deal with from time to time. They are Subpoenas, Location Orders and Interim and Final Parenting Orders. These situations arise from parties to proceedings in the Federal Circuit Court or Family Court of Australia who have children or grandchildren attending childcare centres.

This article will focus on Subpoenas and how they should be dealt with.

Subpoenas are filed in the Court when parties are seeking for a third party to disclose documents or provide evidence.

One of the main reasons why centres are served with a Subpoena is to obtain records of who is signing a child in and out, and when. Other reasons may include incident reports and to gain knowledge of the general wellbeing of a child or otherwise. This is because, in all matters before the Courts, the parties will inevitably need to support their case in the best interest of the child. This is why the development or otherwise of the child is extremely useful to the parties' lawyers during proceedings. Likewise, where the Court has appointed an Independent Children's Lawyer ("ICL") to represent the interests of the child during the Court process, the ICL will file Subpoenas on the child's Doctor, School and childcare to obtain credible and objective evidence on the child's development and wellbeing.

### Should I automatically give whatever is asked for in a Subpoena?

The short answer is "No". You should first seek legal advice on the nature of what is being sought. This is because there may be possible reasons to object based on your childcare regulatory obligations. Moreover, you do not want to breach these obligations based on a poorly prepared Subpoena that may or may not be a "fishing expedition".

### Producing Documents

When you are served with a Subpoena there will be a time in which you need to produce the documents by. Always check these dates and comply with them if you intend on producing the documents. When producing the documents do not provide them to the law firm or party that served the Subpoena on you. The documents must be produced to the Court and the Subpoena will have an address where they can be sent. Do not assume that it will be in the Federal Circuit Court or Family Court or even the local Registry in the State you are in. For example, if the matter has been filed in Melbourne and your centre is in Cairns, and you return the documents to Cairns, there is no guarantee they will get to Melbourne in time or at all.

A final item to consider is that if your centre is owned by a company entity you will be served by post on your company's registered address. Always ensure someone is checking the post at the registered address of your company.

### Conduct Money

When you are served with a Subpoena there should also be a cheque for conduct money. This is to compensate you for the time to produce and send the documents. The amount will vary on the request itself. It is best to have your solicitor advise you on whether the amount of conduct money is sufficient to compensate for the request made.

### Subpoena to Appear as a Witness

Not as common as a Subpoena to produce documents, is a Subpoena to appear as a witness in a trial. There is very little that you can do to object to your appearing, unless you are unwell or having to appear would place you under undue hardship. You can however request to appear by telephone which would usually be granted. You will also need to be provided with conduct money.

If you need assistance in this regard, please do not hesitate to contact Daniel Armfield by email on [daniel@portalawyers.com.au](mailto:daniel@portalawyers.com.au)

## The Office Goss ...

We wish to announce that Charlie Broadwater, criminal lawyer, is the newest addition to our team at Porta Lawyers. Charlie commenced in September 2016 with the aim of providing legal services in the areas of criminal and traffic law. Charlie provides cost-effective services to clients facing matters before the Courts.

Charlie has been practising law since 2014, primarily in the areas of criminal and traffic law. He was previously employed by Aboriginal Torres Strait Islander Legal Services and private city law firms and has successfully represented many clients in various Courts across South East Queensland.

Charlie welcomes the opportunity of discussing your matter with you and looks forward to being of assistance. Please feel free to contact Charlie Broadwater at [charlie@portalawyers.com.au](mailto:charlie@portalawyers.com.au)

