



# EVERSOL'S weekly law

Contributed by Jennifer Blissett

## Trust me, I'm your father

In a recent New South Wales Supreme Court decision the facts were, following the death of the de facto partner of a man (who will be referred to in this article as Mr A), with whom Mr A sired a daughter, Mr A then commenced living in a second de facto relationship which lasted five years.

On the breakdown of the second relationship, the parties sought an order as to how their assets should be distributed before the Supreme Court of New South Wales. The assets included various parcels of real estate, some of which had been brought to the relationship by Mr A.

It transpired that some of the real estate had been under mortgage. Mr A's first de facto partner had died without making a Will. The real estate, in the name of Mr A and his first de facto partner, passed to Mr A automatically, he being the surviving joint tenant. Also, the first de facto partner of Mr A, though dying intestate (without a Will) arranged her affairs so that the child to her relationship with Mr A should receive certain moneys. Mr A, though unclear as to the amount received on behalf of his child, used this money to discharge the mortgages on the real estate.

As the child was under the age of eighteen (18) years at the time of the Court proceedings between Mr A and his second partner, the child's legal representation was arranged and it was argued that the use of her money created an interest for the child in the real estate.

This argument was rejected by the judge and in the circumstances of the matter it was found that no beneficial interest was created in favour of the child. However, the Court did find that the funds received by Mr A (the child's father) on behalf of the child still belonged to the child. The amount used by the father that was the child's, plus interest, was to be refunded to the child.

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