

Real Estate and The Law

New Contract of Sale

As from 28 September 2008, a new form of Contract for the sale of land in Victoria has been prescribed. Contract Notes will no longer apply. The new prescribed Contract, or a Contract prepared by the lawyer or licensed conveyancer, will now be required to be signed. The new Contract is significantly different in appearance to the existing Contract. Vendor's Statements remain the same.

The new Contract contains numerous "General Conditions". Some of those conditions directly reflect terminology in the *Sale of Land Act* and *Transfer of Land Act*.

As with all Contracts, you should obtain legal advice before signing. There are conditions in the new Contract which may require amendment to suit your individual circumstances. Contact us to discuss preparation of a Contract or signing your proposed Contract before you sign.

For further information, contact Tim Kelly – tkelly@rigbycooke.com.au or 03 9321 7839.



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Off-the-plan stamp duty amendments

The manner in which stamp duty is calculated will change for off-the-plan contracts of sale entered into on or after 1 October 2008. The purpose of the change is to provide greater certainty in the calculation of stamp duty.

There are two approaches that can be taken by a vendor. The first is known as a "whole project approach" and the second is known as a "single lot approach". The vendor must elect which "approach" to use.

In addition, the manner in which a stamp duty saving is calculated may be done in two ways. One is on a fixed percentage method and the other requires a declaration of land values and actual construction costs. The evidentiary

requirements of these approaches and calculations differ.

In some instances the vendor may be deemed jointly and severally liable with the purchaser for any additional stamp duty the State Revenue Office deems payable. Both vendors and purchasers should get advice on correctly prescribing the dutiable value of property before entering into off-the-plan contracts.

For further information, please contact Trish Sheedy - tsheedy@rigbycooke.com.au or 03 9321 7835.

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Contaminated land

Are you thinking of buying or leasing? Do you know the history of the property?

Environmental issues and contaminated sites are becoming more of a concern. This may apply to a suburban site, for example one previously used as a service station, dry cleaning operation or other potentially contaminating use, or to your country site or holiday home area which may have had farm sheds, sheep dips, dieldrin usage or other contaminants on the land. Check before you buy or lease.

As well as having a contaminated site, you as the occupier may be faced with a clean up notice from the Environment Protection Authority, whether or not you caused the contamination. Having some understanding as to the environmental condition of the land prior to buying or leasing is a critical risk management step.

For further information, contact Jo Robinson, 03 9321 7893, jrobinson@rigbycooke.com.au

Leases & rent reviews

Are you a retail landlord or tenant? Does your lease provide for a market review of rental? Is a market review required on the basis that the *Retail Leases Act* deems the rent review provision in your present lease void?

We are finding many landlords and tenants do not want to agree on a new rent without professional advice, whether for their own information to assist in negotiations or having a review after a referral to the Small Business Commissioner. We recommend that you discuss with us the pros and cons of a professional review.

For further enquiries or advice, contact Dan Flynn – dflynn@rigbycooke.com.au or 03 9321 7855.

Tree maintenance

Recent court cases have demonstrated the need for a regular review of trees on properties in conjunction with a tree maintenance program.

This general principal applies to all properties but is particularly relevant to commercial properties such as hotels, motels and caravan parks. Serious injuries have resulted to people from falling branches. Damages have been awarded against land owners or occupiers running into millions of dollars.

Clients should check their trees, have a suitably qualified contractor carry out a regular review, and take advice from the contractor on the necessity for putting into place a tree maintenance program. This is of particular importance for commercial properties. Private property owners should also be diligent.

For further enquiries or advice, contact Tim Kelly – tkelly@rigbycooke.com.au or 03 9321 7839.

Owners Corporations

With the introduction of the Owners Corporation Act 2006 there are new documentation and disclosure requirements relating to plans of subdivision.

Owners and developers need to be aware of these requirements at the outset of a project to avoid unnecessary delay, cost, paperwork and angst at the point of registration of a plan of subdivision.

Some initial issues for consideration include the requirement for a limited or unlimited Owners Corporation, unit boundaries,

changes to model rules, manner of calculation of lot entitlement and liability, appointment of a manager, management plans and the now detailed documents required.

It is the owner's obligation to hold the first meeting of the Owners Corporation within 6 months of registration of the plan and to ensure that all required documentation is in existence and provided to the Owners Corporation.

A developer who arranges a conference between their lawyer and surveyor at an early

stage in the development process will undoubtedly save time, money and headaches during the development process.

For more information or advice, please contact Trish Sheedy - tsheedy@rigbycooke.com.au or 03 9321 7835.

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