

Off the plan sale changes

The *Consumer Affairs Legislation Amendment (Reform) Bill 2010* (Vic) was passed with amendments on 16 September 2010 and is awaiting assent. It amends section 9AA in the *Sale of Land Act 1962* (Vic) and is expected to come into operation on 1 September 2011 unless proclaimed earlier.

The proposed change of deposit amount from 10% to 20% was not agreed to and a maximum deposit of 10% has been maintained.

The amendments do require that the front page of an off-the-plan sale contract contain a notice to purchasers that:

- a. subject to the limit set by subsection 9AA(1)(b) (i.e. 10%), the purchaser may negotiate with the vendor about the amount of deposit moneys payable under the contract; and
- b. a substantial period of time may elapse between the day on which the purchaser signs the contract for sale and the day on which the purchaser becomes the registered proprietor of the lot; and
- c. the value of the lot may change between the day on which the purchaser signs the contract for sale of that lot and the day on which the purchaser becomes the registered proprietor.

Subsection 9AA(2) is also amended so that deposit money will only be paid to either the legal practitioner, conveyancer or licensed estate agent acting for the vendor. When the Act comes into force deposit money **will not be allowed** to be paid into a special purpose account in joint names of the purchaser and vendor. Transitional provisions protect money already paid into joint accounts immediately before the commencement of the Act.

Practitioners should review sections 57 to 60 of the amending Bill and look out for when it is to come into operation.

New Commonwealth Commercial Building Disclosure

The *Building Energy Efficiency Disclosure Act 2010* (Cth) commenced on 1 July 2010 and brings with it a new regime for disclosing energy efficiency ratings for certain commercial buildings before selling or leasing floor space over 2,000 square metres.

The Act makes it an offence, with a civil penalty of 1000 penalty units, to sell or lease office space with a net lettable area of 2,000 square metres without first providing the buyer or tenant with a building energy efficiency certificate (BEEC). The Act and regulations list the information that must be in a BEEC. It will be issued by an issuing authority based on an application of an accredited assessor. The certificates will be only valid for 12 months and must be registered on the Building Energy Efficiency Register.

continued over the page

Retirement village trap for property lawyers

In a recent claim a firm of solicitors was retained to act in relation to the sale of a retirement village unit. A copy of the retirement village service contract was provided when instructions were given.

The firm was busy acting in relation to the sale of the unit and did not pay careful attention to the contents of the service agreement. This agreement provided that a deferred management fee for a full year would be payable, as at a certain date each year. The allegation against the firm was that it delayed in effecting settlement until after that date, resulting in a further year's deferred management fees being payable. This amounted to an extra \$20,000.

Practitioners should pay careful attention to the timing of payment clauses when dealing with retirement village sales.



Converting \$'s causes claims

We have recently had several notifications where the conversion of Australian dollars into foreign currency before sending it overseas has led to complaints by the recipient.

Lawyers are often called to send money overseas in the context of distributing deceased estates or paying the proceeds of sale of a property or a business to a client now living overseas. In some instances no one has thought about the form of the currency to be sent until the bank officer dealing with the transaction recommends that the money be converted to the foreign currency before it is sent, as the 'usual practice'. The clerk or accounts department employee of the firm just accepts the recommendation not appreciating the implications. Sometimes the client does actually instruct the practitioner how the money is to be transferred but those instructions are not passed on to the person organising the transfer.

In recent cases the clients all maintained afterwards that they wanted the money transferred in Australian dollars, as opposed to the currency of the country, because it could more readily be invested. There were also complaints about the very poor rate of conversion offered by the bank. The movement of currency rates from day to day can mean big losses if the client insists on converting the money back even a week after the initial transfer.

In some instances the bank may say it is not able to transfer money in Australian dollars to the desired destination. In one claim that was the case. However, what the bank did not tell the law firm was that a different bank (with a branch across the road) could send money to the destination in Australian dollars.

Risk Management:

- Whenever money is being sent overseas, clear written instructions should be obtained as to the currency in which the money is to be transferred.
- Ensure that staff arranging for the transfer of funds understand the issues and only act on clear written instructions as to the currency to be used.
- If the bank says they cannot send money in Australian dollars, question them as to why and shop around as another bank may be able to do so.

New Commonwealth Commercial Building Disclosure *continued*

The energy efficiency disclosure obligations commence on **1 November 2010**. There is a transitional period of 12 months in which National Australian Built Environment Rating System (NABERS) base or whole building rating can be disclosed rather than the BEEC. From 1 November 2011 a full BEEC will need to be disclosed. The government has warned that obtaining a NABERS can take some time and clients should be encouraged to start early and allow enough time for the rating to be obtained before attempting to sell or lease the relevant office space.

Practitioners are encouraged to familiarise themselves with these new requirements. Information can be obtained from www.cbd.gov.au

New Risk Managers at LPLC

We are pleased to welcome Richard Antill and Matthew Rose who will work with our Chief Risk Manager, Heather Hibberd.

Prior to joining LPLC Richard was a barrister at the Victorian Bar for seven years. He practised in general commercial litigation with specialties in property matters and solicitor-client disputes.

Matthew joined the LPLC in September 2010 after working in risk management roles with the London offices of global law firms Clifford Chance and Mayer Brown. Previously, Matthew practised as a Senior Associate in Minter Ellison's commercial litigation group.

Catherine Hannebery has left our risk management team at the LPLC to pursue hands on risk management in-house. We wish her well in her new position.

DVD - 2010 Risk Management Intensive

We are pleased to advise that a DVD of the 2010 Risk Management Intensive is now available.

The DVD is available for sale for the full day, or half day of your choice. The cost of the DVD is \$166 for the full day and \$77 for half day. Details of the programme are available on our website.

You will be able to claim 5 CPD scheme units of private study by viewing the whole day DVD and 3 CPD scheme units for the half day program. (Note: 5 CPD scheme units is the maximum that can be claimed for private study in any one year.)

To order please go to our website at www.lplc.com.au and download the order form, fill in and return with your cheque. If you have any queries, please contact Kelly Cooper at kellyc@lplc.com.au

WHY RISK MANAGEMENT?

Minimising your risk is the best way to contain the cost of your insurance.

LEGAL PRACTITIONERS' LIABILITY COMMITTEE

Level 31, 570 Bourke Street, Melbourne, VIC 3000
Telephone (03) 9672 3800 Facsimile (03) 9670 5538
www.lplc.com.au