

## Table A repealed!

The *Land Legislation Amendment Act 2009* (Vic), when it comes into operation on or before 1 May 2010 will repeal section 48 and Table A of the Seventh Schedule of the *Transfer of Land Act 1958*.

The transitional position is set out in a new section 130 of the TLA:

On and from the commencement of section 71 of the **Land Legislation Amendment Act 2009**, any reference to Table A of the Seventh Schedule to this Act in a contract is to be taken to be a reference to Table A of that Schedule as in force immediately before its repeal.

Practitioners who still have reference to Table A in their current sale of land contracts should act now to redraft their contracts and remove reference to Table A.

Practitioners should also note that section 60 of the amending Act also provides for a new section 108(9) to be inserted into the TLA which will enable the Registrar to retain fees paid in respect of an application or dealing which is lodged but then withdrawn.

## Owners corporation certificates clarified

The *Consumer Affairs Legislation Amendment Act 2009* (Vic) amends various Acts, including the *Owners Corporations Act 2006*. It was assented to on 9 February 2010 but most of its provisions come into operation when proclaimed or at the latest on 1 January 2011. At the date of publishing this newsletter it had not yet been proclaimed.

The various amendments to the *Owners Corporations Act* appear on the whole to clarify its operation. The amendments include the following:

- section 151 requires that owners corporation certificates be sealed with the owners corporation common seal, putting to rest the debate about whether the certificates needed to be signed or sealed in some way;
- section 19 requires that common seals also include the number of the plan of subdivision that created the owners corporation. A transitional provision at subsection 19(3) states that a common seal in existence prior to the commencement of the amendment will not be invalid if it does not contain the subdivision's plan number. All new common seals after the amendments come into operation will however need to comply;
- subsection 11(2) requires that instruments of delegation be made at general meetings and only last until the next annual general meeting unless revoked sooner;
- the definition of building for insurance purposes in section 54 includes any shared services.

Practitioners should familiarise themselves with the changes made by the *Consumer Affairs Legislation Amendment Act* and keep watch for when it comes into operation.

## Limitation of Liability Scheme

Law Institute of Victoria members will have recently received a Frequently Asked Questions brochure about the LIV Limitation of Liability Scheme. The proposed scheme does not affect the requirements to obtain insurance from the LPLC. Practitioners are encouraged to carefully read the LIV brochure and if they have any questions to direct them to Joy Acquaro on 9607 9562 at the LIV.

A copy of the brochure is available on the LIV website at [http://www.liv.asn.au/PDF/Practicing/LLS/LimitedLiabilityScheme\\_FAQs\\_web](http://www.liv.asn.au/PDF/Practicing/LLS/LimitedLiabilityScheme_FAQs_web)

## FURTHER LAND TAX ACT CHANGES

In issue 41 of *In Check*, dated December 2008 we noted changes to the *Land Tax Act 2005* (Vic) in relation to **administration trusts** and the requirement that personal representatives of a deceased estate that includes land in Victoria must lodge a written notice with the Commissioner within one month after the administration of the estate is complete (s.46K(5A)). Further amendments to the *Land Tax Act* and the *Taxation Administration Act 1997* (Vic) which came into effect on 9 December 2009 create a **notification default** where:

- trustees fail to provide the notices required under section 46K of the *Land Tax Act*; or
- landowners fail to notify the Commissioner of an error or omission in a notice of assessment.

This puts the onus on landowners to notify the State Revenue Office if there is a mistake in the land tax assessment. It also makes it clear that trustees who fail to notify the Commissioner that they have become a trustee or disposed of land that they held on trust can be penalised or personal representatives who fail to notify when the administration of the estate is complete can be penalised.

The penalty is described in the *Taxation Administration Act* at sections 29 and 30. The penalty for a notification default is 25% of the additional amount of tax that the taxpayer would have been assessed as liable to pay had the notification default not occurred. This can be increased to 75% if the Commissioner is satisfied the default was caused by the intentional disregard by the taxpayer of section 46K or 104A of the *Land Tax Act*.

Practitioners should familiarise themselves with these changes particularly when acting for deceased estates.

## Meaning of 'rent reserved'

The State Revenue Office has issued a Ruling DA.050 to provide guidance on the meaning of the term 'rent reserved' following amendments to the *Duties Act 2000* (Vic) affecting stamp duty payable on leases. The Ruling explains what factors will be taken into account in determining whether an amount payable under the lease amounts to 'rent reserved'.

The *Duties Act* amendments were covered in LPLC's August 2009 Risk Alert 'New stamp duty on leases'.

## Risk management

### SEMINARS FOR 2010

LPLC will be running its Country Risk Management programme in April and May this year. Brochures have recently been sent to country practitioners and a copy of the brochure is also available on the website.

The dates are as follows:

- Bendigo, Tuesday 20 April 2010
- Mt Eliza, Thursday 29 April 2010
- Wodonga, Tuesday 4 May 2010
- Shepparton, Wednesday 5 May 2010
- Warrnambool, Tuesday 11 May 2010
- Ballarat, Wednesday 12 May 2010
- Traralgon, Tuesday 18 May 2010
- Mildura, Tuesday 25 May 2010

The topics to be covered are:

- Property law
- Wills and estates
- Why country claims are different

We will require a minimum registration of 20 participants for each centre so please register as soon as possible.

The 2010 city Risk Management Intensive will be held on the following dates:

- Tuesday 3 August,
- Tuesday 10 August and
- Wednesday 18 August 2010

So put those dates in your diary now.

### NEW RISK MANAGEMENT BOOKLETS

The LPLC has recently sent four new editions of our risk management booklets to our insured firms. They are:

- *Claim Free Conveyancing*
- *Looking After Leases*
- *Managing Mortgage Risk – Amadio and beyond*
- *Focusing on Family Law*

This year we have sent the booklets to one contact person at the firm to be distributed to practitioners within the firm. Practitioners are encouraged to ensure that they receive their booklets. Further booklets are available on request for our insured firms and copies will be available on our website under Risk Management – Publications.

We welcome any feedback practitioners have on the booklets. We expect to have a further 3 editions and a new booklet covering the risks in the area of wills and estates available in the next few months.

### WHY RISK MANAGEMENT?

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

### LEGAL PRACTITIONERS' LIABILITY COMMITTEE

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