

Current Victorian Conveyancing Issues

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Acknowledgement of traditional owners and country

Our webinar is being held on the lands of the Wurundjeri people of the Kulin Nation and on behalf of LPLC I wish to acknowledge them as the traditional owners of the land.

I also acknowledge the traditional owners of the lands which all of those joining us online today are living, learning and working on.

I would also like to pay my respects to their Elders past and present, and any Elders of other communities who may be present today.

Overview

- *The State Taxation Acts and Other Acts Amendment Act 2023*
- Adjustments of Land Tax and WGT
- Vacant Residential Land Tax
- Case updates
- Questions



Legislation Changes

- *The State Taxation Acts and Other Acts Amendment Act 2023*
- Royal ascent 12 December 2023
- Most changes commence 1 January 2024



Apportionment Land Tax

- New section **10G** is added to the Sale of Land Act
- No apportionment of land tax between a vendor purchaser from **1 January 2024**
- Does not apply to contracts entered on or before 31 December 2023



Windfall Gains Tax

- New section **10H** is added to the Sale of Land Act
- No apportionment of an **existing** Windfall Gains Tax liability (assessment issued)
- An adjustment clause can be used if no WGT liability has issued, and arises post contract but before settlement
- Does not apply to contracts entered on or before 31 December 2023



Existing WGT liability

- Vendors with **existing WGT liability** must factor it into the sale price
- Cannot pass on existing WGT liability, it becomes payable by the vendor in full at settlement
- Reminder: subsequent sale will end the 30-year deferral



Future WGT liability

- These changes don't prohibit the adjustment of a **future** WGT assessment which arises after the date of the contract
- Parties may agree by special condition that the liability:
 - be borne by the vendor (who will receive the assessment)
 - the purchaser at settlement
 - apportioned between the parties



Prosecution and Penalties

- Prosecution and potential penalties can apply for breaches of the new sections 10G (Land Tax) and 10H (Windfall Gains Tax)
- Current penalties are \$11,540 for individuals and \$57,700 for corporations



All Contracts of Sale

Ensure all contracts of sale of real estate comply with:

- New S10H (no adjustment of Land Tax)
- 10G (no adjustment of existing Windfall Gains Tax)



Law Institute Contract of Sale

- The LIV contract of sale of land is being updated to change General Condition 23
- Special conditions suggested by LIV in the interim:
 - **Condition 1:** "Periodic outgoings" in General Condition 23 excludes amounts under section 10G of Sale of Land Act 1962.
 - **Condition 2:** General Condition 28 does not apply to amounts under section 10G or 10H of Sale of Land Act 1962.

Refer to the Law Institute of Victoria website for detailed information



If no Land tax

- Principal Place of Residence and certain farming properties typically exempt from Land Tax
- However still an **offence** to include reference to Land Tax in the adjustment condition
- Important that **all** contracts should be reviewed to remove Land Tax from adjustment conditions



Vacant Residential Land Tax (VRLT)

The Land Tax Act 2005 is amended to expand Vacant Residential Land Tax (VRLT) to **all** residential land in Victoria.

- This tax applies to Land capable of being used for **residential** purposes (not vacant land)
- In general terms, property is vacant if it has not been 'occupied' for 6-months in the previous year
- There are some exemptions that may apply such as a holiday home, but conditions apply for all exemptions

Vacant Residential Land Tax (VRLT)

- Taxable vacant residential land will be taxed a minimum of 1% and up to 3% of the Capital Improvement Value (CIV), not the land value
- It is an ongoing annual tax, and paid in addition to land tax
- The rate of tax will increase if the property is vacant for consecutive years (1% first year, 2% second year, 3% third year) to a maximum of 3%
- The extended tax starts 1 January 2025, but is based on **occupancy from 1 January 2024**

Vacant Residential Land Tax (VRLT)

New Tax

- Changed include a new tax on vacant land suitable for residential use of the land has been vacant for 5 years in one ownership
- This new tax commences **1 January 2026**



Proposed Duty Changes

- May 2023, treasurer announced changes from duty to an annual property tax
- Annual property tax of 1% of unimproved value
- Only applies to commercial and industrial property
- Changes flagged from 1 July 2024



Annual Property Tax

No details yet, but some considerations;

- What property will it apply to and what if its status changes (commercial to residential)
- An option to pay duty or the APT in the Transitional period (different cost)
- Properties only transition to the new system as they are sold
- How will the APT apply to lease outgoings



Case updates

Asia Digital Investments P/L v Mara Dextra P/L [2023] VSC 565

Off the plan – Ongoing disclosure obligations

- Owner of land at Portsea sold one of two lots off the plan
- Purchaser sought to avoid the contract on the basis that the vendor had not complied with the obligation to:
 - disclose works affecting the natural surface level of the land
 - particularly the **ongoing obligation** to disclose such works that were proposed to be carried out after the contract and before settlement

Asia Digital Investments P/L v Mara Dextra P/L [2023] VSC 565

- Court found in favour of the purchaser and ordered a refund of the deposit, plus interest
- Not a typical off the plan subdivision involving many lots and case did turn on the facts

Reinforces a vendor's **obligation** to disclose proposed works prior to contract and the continuing nature of that disclosure obligation.

GLP Batesford Holdings P/L v 68 Bridge Road Land P/L [2022] VSC 614

Early Deposit Release

Vendor included a condition that:

- required the purchaser to sign and return a s.27 Deposit Release Statement within 5 business days of service, and
- failure to do so would constitute a breach entitling the vendor to rescind
- Purchaser objected to deposit release and the vendor issued a Rescission Notice.



GLP Batesford Holdings P/L v 68 Bridge Road Land P/L [2022] VSC 614

- Court held 5-day limitation was **void as being contrary s.27**
- Court also held that once the purchase lodged an objection to the deposit, it could not be released

This decision severely limits the vendor's ability to access the deposit.

If entering into real estate contracts, be aware that the courts will likely **strike down** contractual provisions that seek to alter legislative requirements relating to early release of deposits.

Huang v Kotsias [2022] VCC 470

- Interlocutory proceedings related to purported unilateral severance of joint tenancy by action taken by the Attorney of one joint tenant pursuant to a Power of Attorney
- Relying on s.72(3) Property Law Act joint tenant (by his Attorney) sought to transfer his interest as joint tenant to himself as tenant in common and lodged the transfer and certificate of title for registration
- The other joint tenant sought an injunction to prevent registration

Severance Approved

- County Court refused the injunction, thereby allowing the transfer to be registered and ownership registered as tenants in common (approving the severance)
- Court noted that equitable severance was not possible because the transfer was by way of gift and, despite the transferer having done all within its power to perfect the transfer, equity would not perfect a gift



Re Wilson [2019] VSC 211

Compare

- Joint proprietor signed Transfer of Land, on behalf of himself and as Power of Attorney for the other joint proprietor, transferring the land to both previous joint proprietors as tenant in common in equal shares
- Transfer was assessed for duty (non-dutiable) but not registered
- Court accepted that there had been a severance in **equity**, notwithstanding that the transfers had not been registered on title

Whitty v Talia [2023] VSCA 246

Severance

- Joint tenancy severed by course of conduct of joint tenants
- Documents signed by joint tenants at the time of acquisition of the property recognising rights of one joint tenant to deal with the property were held to be destructive of the principle of survivorship



Betts v Harman [2021] VCC 1349

Section 137B

- Sale by owner builder
- No condition report or owner builder's insurance in the original documents
- Settlement extended and the vendor obtained a condition report and owner builder insurance



Betts v Harman [2021] VCC 1349

- Section 137B does not include a provisions that prevents contracting-out, unlike section 137C which does include such a provision
- Case has concluded that the Act does not prohibit the particles contracting out of section 137B



Willis v Crosland [2021] VSCA 320

Building Report Condition

- Purchaser sought to rely on Building Report provisions (LIV Contract – General Condition 21)
- First report identified a ‘major defect’
- The vendor disputed the first report
- A second report found **no** ‘major building defects’
- Purchaser didn’t complete settlement and vendor retained the deposit

Willis v Crosland [2021] VSCA 320

- Purchaser sued for return of deposit
- Court held it was sufficient that the report claimed 'major defects'
- Not for the court to undertake an analysis of the findings in the report or as the court said undertake a 'contestable evaluative assessment'



Questions

Questions, comments, concerns

