

## Urgent bulletin for conveyancing practitioners: 1 July new CGT withholding payments for real property sale of \$2M or more

If you missed LPLC's previous email bulletin about the new CGT withholding requirements for the sale of real property worth \$2M or more [click here](#).

### Key points:

- New requirements apply for contracts of sale of real estate worth \$2M or more entered into from 1 July 2016.
- All purchasers of such real estate must withhold ten per cent of the purchase price unless they are given a clearance certificate by the vendor.
- Vendors of such property who are not foreign residents need to apply for a clearance certificate as soon as possible.
- Real estate includes vacant land, residential and commercial property - no exceptions.
- A purchaser of a relevant **CGT asset** will be required to withhold ten per cent or another amount specified, from the purchase price of the asset and remit that money to the ATO. Failure to do so will render the purchaser liable to penalties and interest.

## A further stamp duty increase for foreign purchasers

In Victoria the extra duty payable by foreign purchasers on residential property will increase from three per cent to seven per cent from 1 July 2016 if the State Taxation and Other Acts Amendment Bill 2016. This Bill is awaiting royal assent.

Queensland is set to impose a stamp duty surcharge of three per cent on direct and indirect acquisitions of residential property by foreign purchasers from 1 October 2016. Unlike in Victoria, the liability for payment of surcharge will also include the vendor.

The New South Wales Government recently announced that they would be imposing a four per cent stamp duty surcharge on the purchaser of residential property by foreign purchasers. It was said to be effective from 21 June 2016.

## Changes to lodging fees from 1 July 2016

**From 1 July 2016 there will be significant changes to lodging fees for transfers of land.**

- Currently the lodging fee is \$138.90 plus \$2.46 for every whole \$1,000 of consideration capped at \$1,369 (consideration of \$500,000).
- From 1 July the fee will be \$92.70 plus \$2.34 for every whole \$1,000 of consideration capped at \$3,602.70 (consideration of \$1.5M).

This new fee is higher for transactions over \$550,000 and practitioners need to make appropriate amendments to their precedents and processes, particularly where there is no lender involved and the practitioner will be stamping and lodging the transfer.

## New page for new firms on LPLC website

LPLC has a new website page [New to LPLC?](#) for practitioners who have just set up their own firms and need a summary of what we do and what services we provide.

## 2016 Risk Management Seminars

### Risk Management Intensive

27 July | 4 August | 9 August 2016

Registrations open | [Register here](#)

### Legal Business Essentials

6 September | 18 October | 3 November 2016

Registrations open 10 August 2016

### Metro Series

Dandenong - 9 November

Ringwood - 15 November

Moonee Ponds - 17 November

Bundoora - 23 November 2016

Registrations open 4 October 2016

Brochures will be emailed to you. Seminars are listed on our website under [Training](#).

## Law Institute Journal articles

Each month LPLC writes an article for the Law Institute of Victoria's journal. The articles are posted on our website at the start of each month.

Articles published in the past six months are:

### December [Strategic thinking reduces risk](#)

Business strategy in a changing legal market affects risk of claims.

### Jan/Feb [Traps for young lawyers](#)

Developing good risk management from the start of your legal career can help you avoid a claim.

### Mar [Don't fall for fakes](#)

Practitioners need to be wary of increasingly sophisticated scams.

### April [Advising on contracts](#)

Giving full and proper advice about contracts will help you avoid a claim.

### May [Failing to plan is planning to fail](#)

Practitioners need to be proactive from the outset in litigation matters.

### June [Old claims and new building laws](#)

The LPLC sees claims every year where practitioners have failed to properly advise a client about building issues.

## Changes to the Power of Attorney Act 2014

A Powers of Attorney Amendment Bill 2016 has been introduced to parliament. The Bill proposes to make various changes to the principal Act, the most welcome of which is to clarify that multiple alternative attorneys can be appointed for one principal attorney or supportive attorney.

Other notable changes include:

- removing the option to make a power of attorney for both financial and personal matters
- specifying that a later power will revoke an earlier power unless the later power specifies otherwise
- where an attorney appointed as part of a majority power is no longer acting as an attorney and the remaining attorneys cannot act by majority then they must act jointly.

The Act, if passed, will come into operation on a day to be proclaimed or on 1 May 2017.

## *Badenach v Calvert* – the final chapter

The High Court overturned the decision of the Full Court of Supreme Court of Tasmania that was reported in [In Check issue 68](#). The High Court unanimously found that the practitioner who drew a will did not owe a duty to the sole intended beneficiary to advise the testator how to avoid a possible family provision claim.

The practitioner who drew the will did not ask the testator if he had any relatives and consequently did not advise the testator that his estranged daughter could make a family provision claim or how to avoid that.

The court said that a duty to the testator extended to enquiring about any relatives the testator might have and advising on the risks of a family provision claim being made. The court was not convinced the duty extended to advising the testator how to dispose of his assets inter vivos so as to defeat any family provision claim.

One judge held that a duty owed to an intended beneficiary was a narrow duty that was limited only to act in a manner and to the extent identified in the testator's instructions. That is, to prepare a legally effective testamentary gift.

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## Common GST question

**My client has purchased a block of land from a mortgagee in possession. In the particulars of sale, 'plus GST' has not been written in the appropriate box. However special condition 14 says:**

*Notwithstanding any other provision in this contract, the vendor discloses that, on the basis of reasonable information available to the vendor in its capacity as mortgagee, the vendor believes that the supply constituted by this contract would not be a taxable supply if the mortgagor were to make it and that such supply therefore does not constitute a taxable supply in accordance with the provisions of section 105-5 of the GST Act.*

*If the vendor is incorrect in assuming that section 105-5 applies in relation to the supply constituted by this contract and the contract is held to be taxable supply for the purposes of the GST Act, then the GST section in the particulars of sale is deemed to be amended to state 'plus GST'.*

**Is the vendor correct in stating that there will be no GST payable under the contract of sale, even though the vendor is a mortgagee in possession?**

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### Answer

The situation is governed by section 105-5 of the GST Act.

- The primary issue is whether a hypothetical supply by the mortgagor would have been taxable. If it would, then subject to the next two points, the mortgagee's supply will be taxable regardless of whether the mortgagee was registered or required to be registered for GST.
- Supply will not be taxable if:
  - the mortgagor gives the mortgagee a written notice saying a supply by the mortgagor would not have been taxable and 'stating fully the reasons why...'. If a notice is provided but does not give a feasible explanation of why the supply would not have been taxable, then supply would be taxable (assuming that the mortgagee is registered or required to be registered for GST).
  - the mortgagee believes 'on the basis of reasonable information that the supply would not be a taxable supply if the mortgagor were to make it'. The mortgagee must make sufficient and appropriate enquiries.
- If the mortgagee does not make sufficient or appropriate enquiries or the results of the enquiries made would not form the basis of a reasonable belief, then the supply would be taxable.

Enquiries would have to be made as to the basis of the mortgagee's belief that the supply was not a taxable supply to determine if section 105-5 applies. The special condition is a curious clause that does not lead to any certainty as to the GST treatment.

**For more information search our website for [GST](#) or see [Frequently asked questions](#).**

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