

## NEWSLETTER

### Legal Up-Date

### October 2007

#### STAMP DUTY REFORM

In 2006 the NSW government passed legislation to abolish various stamp duties. As a result:

1. no stamp duty will be payable on commercial leases executed on or after **1 January 2008**;
2. as from **1 July 2012**, stamp duty on the transfers of business assets (excluding real property) will be abolished. At present, the following assets are generally included in dutiable property for stamp duty purposes if a business is sold:
  - the goodwill of the business;
  - intellectual property that has been used or exploited in NSW during the previous 12 months; and
  - a statutory licence or permission under a Commonwealth law; and
3. stamp duty on all transfers of “marketable securities” will be abolished as from **1 January 2009**. “Marketable securities” include shares in an Australian company; and units in a unit trust scheme which are registered in NSW.

Please, note however that stamp duty will still be payable on the sale of land and accordingly, the sale of shares in a “land rich entity” will continue to be liable to stamp duty.

Earlier this year the government also introduced a bill to abolish mortgage duty generally as from **1 July 2009**. In the meantime, two new exemptions have been introduced:

- (a) the abolition of stamp duty on mortgages for the purposes of owner occupied housing as from **1 September 2007**; and
- (b) mortgage duty will not be chargeable in respect of a mortgage securing an advance for the purpose of investment housing as from **1 July 2008**.

#### THIRD PARTY WRIT BLOCKS SALE AFTER PURCHASE PRICE PAID

On 1 August 2007 the High Court of Australia held that a writ registered by a third party creditor of a vendor on the morning of the settlement date was

effective to prevent registration of the Transfer to the purchaser - *even though* the purchaser had paid the full purchase price on settlement and the vendor had applied the money to pay out his mortgage over the title. As a result, the purchaser was at risk of losing the whole of the purchase money.

Priority under the property title system in NSW basically depends on the order of registration. Because the writ was lodged for registration a matter of hours before the Transfer, the writ took priority and the Transfer could not be registered. Because Transfers are often not lodged for registration until a day or two after completion of a purchase (indeed, if an incoming mortgagee such as a bank is involved, often not until some weeks after completion takes place), until the Transfer is lodged for registration, a purchaser will always be at risk that a third party may have lodged a dealing on the title which prevents registration of the Transfer.

A practical method for purchasers to avoid the risk would be to lodge a Caveat for registration over the title to the property shortly after contracts are exchanged. If a third party has lodged a dealing for registration before the Caveat is lodged, both the purchaser and the vendor will be notified in good time before completion is due. The vendor can then remove the Writ or arrange its removal on completion. If not, the contract can be rescinded and the deposit refunded to the purchaser (assuming, of course, that the purchaser has not consented to a release of the deposit). If a third party lodges a dealing after the Caveat has been lodged then the Caveat will prevent the dealing from being registered. Settlement can proceed and the Caveat withdrawn when the purchaser’s Transfer is lodged for registration.

If you have any queries about stamp duty or conveyancing procedures, please contact Norbert Schweizer on [nschweizer@schweizer.com.au](mailto:nschweizer@schweizer.com.au).

#### YOUR FEEDBACK

If you have any comments about this newsletter, please drop us a line at:

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