

THE 14TH ANNUAL NSW PROPERTY LAW CONFERENCE

A TWO-DAY CONFERENCE ORGANISED BY
TELEVISION EDUCATION NETWORK PTY LTD

SWISSOTEL SYDNEY
THURSDAY 27 AND FRIDAY 28 FEBRUARY 2020

10
CPD UNITS
INCLUDING
COMPULSORIES

E-conveyancing: Meeting our E-xpectations?
Practice and Procedure in Conveyancing: Key Developments and Recent Updates
Legal Issues in Shared Occupancy Arrangements
Key Developments in Leasing Practice and Procedure
Managing Retail Lease Default and Termination in Uncertain Times
Understanding Stamp Duty and Land Tax Liability on Standard Property Transactions
Falling Through the Cracks: Liability for Building Defects
What to do When Your Builder Can't Complete
Can Neighbours be Good Friends?
Where Planning Permission and Property Rights Collide

CPD COMPULSORIES:

Practice Management & Business Skills:

Cyber Security: Building Resilience in your Property Law Practice

Professional Skills:

The Rise and Rise of Electronic Contracts in Property Law

Ethics:

Handling Conflicts of Interest In Property Matters

FEEDBACK FROM LAST YEAR'S CONFERENCE:

"Always relevant topics and practical tips to take back to everyday practice."

"Topics relevant to law and practice today. Great format of presentation. Left more knowledgeable than when I arrived."

"Great refresher on topics very relevant to everyday practice."

"The content of TEN conferences has always been practice oriented and useful."



The professional development specialists

DAY 1 THURSDAY 27 FEBRUARY 2020

**CHAIR: SELWYN BLACK, PARTNER,
CARROLL & O'DEA LAWYERS,
SYDNEY**

**THEME: REFORM AND RECENT
DEVELOPMENTS**

9.00 - 9.10am

Introduction and welcome

9.10 – 9.55am

Session 1: E-conveyancing: Meeting our E-xpectations?

The new e-conveyancing regime commenced in mid-2018 and since July 2019 the majority of all transfer, mortgage and caveat transactions must be lodged electronically. As we edge closer towards a national electronic conveyancing system, how is the system working in practice? Are you meeting all the mandatory lodgement obligations? This session will look at the current state of play and some of the practical issues arising from this new process, as well as potential areas of concern, including:

- Transition timeline and mandatory on-line transactions
- Establishing protocols and processes in the office for digital certification, client authorisations and identification
- Identifying the challenges arising from e-conveyancing and how they have been managed
- Next steps: mandatory electronic exchange of contracts – how will it work?
- New entrants in the space: interoperability issues as potential alternative systems gain ARNECC accreditation
- Use of settlement “agents” in the electronic process – understanding the risks

*Speaker: Tony Cahill, Legal Author & Commentator,
Chatswood*

9.55 – 10.05am Panel Comments and Questions

10.05 – 10.50am

Session 2: Practice and Procedure in Conveyancing: Key Developments and Recent Updates

It has been a busy year for property and conveyancing practitioners with changes to the contract for the sale and purchase of land, as well as legislative reforms impacting on property law. In this session we will highlight some of the matters that you need to be aware of in your day to day practice, including:

- Contract for the sale and purchase of land – latest edition and key changes
- What are the obligations of solicitors and conveyancers? A discussion of the decision of *Guirgis v JEA Developments Pty Ltd* [2019] NSWSC 164
- How to issue notices to complete in an electronic transaction
- What needs to be in the disclosure statement for Off the Plan purchases?
- Changes to occupation certificates under the Environmental Planning and Assessment Act 1979
- Withholding GST in property transactions – practical issues
- Proposed reform of Council planning certificate form and content

*Speaker: Tony Cahill, Legal Author & Commentator,
Chatswood*

10.50 – 11.00am Panel Comments and Questions

11.00 – 11.25am Networking Break and Morning Tea

DAY 1 THURSDAY 27 FEBRUARY 2020

11.25am – 12.10pm

Session 3: The New Normal? Legal Issues in Shared Occupancy Arrangements

Air BnB, short-term holiday letting, hostel accommodation, shared work spaces and similar non-lease property arrangements have impacted on traditional property ownership rights and have resulted in the need for greater regulation for the protection of landlords, occupants and neighbours. This session will look at current legislative obligations for these arrangements and issues to keep in mind when acting for investors, owners and property managers, including:

- An overview of the key reforms in the Fair Trading Amendment (Short-Term Rental Accommodation) Act 2018
- The effect of the reforms on owner's corporation by-laws
- Zoning/planning, licensing and safety obligations under the Local Government Act 1919 – to what and when do they apply?
- Shared work spaces – key license terms and conditions
- What to do if your tenant has listed your property on Air BnB? Tips and strategies to safeguard your property
- Income tax and CGT obligations associated with short-term accommodation letting
- What happens when things go wrong – potential liability and protecting your assets

Speaker: Natalie Bryant, Partner, Corrs Chambers Westgarth, Sydney

12.10 – 12.20pm Panel Comments and Questions

12.20 – 1.20pm Luncheon

THEME: LEASES

1.20 – 2.05pm

Session 4: Look before you Lease: Key Developments and Recent Updates in Leasing Practice and Procedure

Commercial, Retail and Residential leasing continues to be the subject of a number of reforms and the early stages of more changes. On top of this, the move to electronic property transactions is paving the way for new practices. Leasing practitioners need to be across these new developments and other topical issues and topical cases, and this session will look at:

- The split of the new Law Society Leases into commercial and retail: what has this meant in practice? Lessons from current case law
- E-leasing through ELN: document preparation, signing and registration, and what issues to look out for
- The impact of the Residential Tenancies Amendment (Review) Act 2018 on landlords and tenants - when do the reforms start and are you prepared?
- A case study of *Realm Resources Pty Ltd v Aurora Place Investments Pty Ltd* [2019] NSWCA 379 on what documentation will form a binding lease
- Green leases – what are they and what are the required terms?
- Ipso facto changes
- Important recent cases on Commercial and Retail Leasing

Speaker: Gary Newton, Partner & Accredited Specialist Property Law, HWL Ebsworth, Sydney

2.05 – 2.15pm Panel Comments and Questions

DAY 1 THURSDAY 27 FEBRUARY 2020

2.15 – 3.00pm

Session 5: The Tenants are Defaulting: Managing Retail Lease Default and Termination in Uncertain Times

The economic downturn, together with the shift to online shopping and commerce, has resulted in the increasing closure of businesses operating in the “bricks and mortar” space. This session will provide practical guidance on managing termination and other changes in the tenancy, and advise on proactive steps to take to protect landlords in times of uncertainty, including:

- The different ways a tenant can end the lease early – surrender, breach, mutual agreement
- Achieving a win/win: assignment, sub-letting and licensing options to assist the tenant
- Receiving or giving notice – form and content, and other legislative obligations
- Dispute resolution options
- Right of entry, make good and forfeiture
- Case studies on lease termination
- Proactive risk management – protecting the interests of landlord and tenant through reasonable negotiations and fair leasing terms

Speaker: Anthony Herro, Principal, Herro Solicitors, Sydney

3.00 – 3.10pm Panel Comments and Questions

3.10 – 3.30pm Networking Break and Afternoon Tea

THEME: LAND TAX AND STAMP DUTY

3.30 – 4.15pm

Session 6: Understanding Stamp Duty and Land Tax Liability on Standard Property Transactions

The imposition of stamp duty and land tax on a property transaction can result in a significant payment. Understanding what transactions are dutiable is the first step in determining the most beneficial form of transaction for your client. This session will look at the tax and duty liability arising from a number of more common transactions, including:

- The conversion of holding from company share to strata title – what liability is triggered and how?
- How to avoid double duty on changing the purchasing entity under “nominee” clauses
- Optimal structuring of related party transactions, particularly when the same party is both transferor and transferee
- Foreign purchasers’ stamp duty surcharge and absentee tax – when do they apply and are there any exemptions?
- Land tax and stamp duty implications for property held in a discretionary trust, issues where a trust beneficiary is a foreign person
- Intergenerational family farm transfers – structuring for optimal tax and stamp duty concessions

Speaker: Andrew Rider, Barrister, Level 22 Chambers, Sydney

4.15 – 4.25pm Panel Comments and Questions

4.25pm

Day 1 close

DAY 2 FRIDAY 28 FEBRUARY 2020

CHAIR: GARRY PRITCHARD, SPECIAL COUNSEL, TOOMEY PEGG, SYDNEY

THEME: PROPERTY DEVELOPMENT CHALLENGES

9.00 – 9.45am

Session 7: Falling Through the Cracks: Liability for Building Defects

The high-profile Opal Tower and Mascot Towers building failures and the issue of flammable cladding on buildings exposes shortcomings in the Australian construction industry, in particular the insufficient protections of owners and occupants. What can a prospective purchase do to protect themselves and what remedies are available for a person owning and/or living in a building which is considered to be unsafe or defective? This session will look at a number of issues, including:

- Liability – who is to blame? Developers, builders or the deregulation of construction
- Statutory and common law rights of owners, successors-in-title, tenants and short-term occupiers
- The Home Building Act 1989 and builders' warranties - when do they apply? Case studies including *Ashton v Stevenson* [2019] NSWCATAP 67
- Remedial action and the role of insurers
- What can be claimed by way of damages?
- An update on the Opal Towers class action against the NSW Government
- Planned “duty of care” reforms and the future regulation of the industry

Speaker: Deborah Kent, Special Counsel, Brown Wright Stein Lawyers, Sydney

9.45 – 9.55am Panel Comments and Questions

9.55 – 10.40am

Session 8: Now You See Him, Now You Don't: What to do When Your Builder Can't Complete

As the once booming building industry starts to experience a downturn, more developers and builders are walking away from their contractual obligations. Governments are looking at reforms to the industry but, in the meantime, there are steps that can be taken to manage this stressful period for a purchaser faced with a half-finished property and a missing or insolvent builder. This session will look at:

- Doing the due diligence – checking out the builder or developer prior to contracting
- Tips on contracting terms for greater protection
- Signs of distress and how to act quickly
- Administration and liquidation – what are processes and where do they leave the purchaser?
- Making a claim – against who and how? Statutory schemes and common law remedies
- Dealing with claims by sub-contractors
- How effective are warranties and insurance?
- Government reforms: the Building Stronger Foundations review and the future of the industry

Speaker: David Creais, Partner & Accredited Specialist in Commercial Litigation, Bartier Perry, Sydney

10.40 – 10.50am Panel Comments and Questions

10.50 – 11.10am Networking Break and Morning Tea

DAY 2 FRIDAY 28 FEBRUARY 2020

11.10 - 11.55am

Session 9: Can Neighbours be Good Friends? Where Planning Permission and Property Rights Collide

The property development boom and zoning changes have brought with them increasing complaints by neighbours of interference with property rights, ranging from overshadowing to noise interference, lost access to views and other restrictions to property enjoyment. This session will explore the common law position concerning traditional property rights, and the effect the granting of planning permission by statutory and other authorities has on those rights. In particular, the session will look at:

- Trespass, nuisance and breach of covenant as enforceable property rights against developers and others
- The intersect between planning law permissions and property rights
- The rights of the aggrieved neighbour v the rights of the property developer: how can these be reconciled?
- What remedies are available for -breach? Injunction and damages discussed.
- A case study of *Lawrence v Fen Tigers* [2014] UKSC 13 and how the decision might be applied in Australia
- The right to airspace: crane oversailing and the case of *Janney & Ors v Steller Works Pty Ltd* [2017] VSC 363
- Overcoming conflict through statutory and other means - Access to Neighbouring Land Act 2000

Speaker: Sydney Jacobs, Barrister, Sydney

11.55am – 12.05pm Panel Comments and Questions

12.05 – 1.05pm Lunch

THEME: COMPULSORY SUBJECTS

1.05 – 1.55pm

Session 10: Practice Management & Business Skills

Cyber Security: Building Resilience in your Property Law Practice

Cyber risk is a growing area of professional risk for all lawyers. However, property law practices, which hold sensitive information and act on high value matters such as property transfers, can be especially vulnerable. Do you have the appropriate tools to prevent a cyber attack? This session arms you with the right skills, including:

- Key components of successful cyber attacks
- Establishing risk reduction measures
- New insurance options to consider
- A breach has occurred – what next?
 - Establishing a response action plan
 - Who needs to be notified?
 - What are your professional obligations?
 - Crisis assistance – what is available?

Speaker: Simone Herbert-Lowe, Director, Law & Cyber, Sydney

1.55 – 2.05pm Panel Comments and Questions

DAY 2 FRIDAY 28 FEBRUARY 2020

2.05 – 2.55pm

Session 11: Professional Skills

The Rise and Rise of Electronic Contracts in Property Law

Parties in property matters are increasingly turning to electronic contracts and communications in property matters. However, when is a term negotiated by email binding on the parties? And, when does a typed name constitute a valid electronic signature? This session explores these issues, including:

- Electronic Transactions Act and what can constitute a signature
- Sale of land and e-signatures
- e-signatures and guarantees
- Difficulties with electronic execution by corporations
- Limiting / exemption clauses in an electronic context
- The use of electronic deeds
- What can you do to prevent email communications from being binding – drafting tips
- The role of extrinsic evidence
- Lessons from recent cases

Speaker: Mark Swan, Special Counsel, Mills Oakley Lawyers, Sydney

2.55 – 3.05pm Panel Comments and Questions

3.05 – 3.25pm Networking Break and Afternoon Tea

3.25 – 4.15pm

Session 12: Legal Ethics

Handling Conflicts of Interest In Property Matters

We may understand the ethics risk in conflicts of interest, but how well do we really address them? This is not just knowledge based, as it involves practical measures to monitor and control risk. This session examines the key issues in these practical responses, including:

- Identifying conflict of interest in property law matters
- Understanding perceptions of conflict same as actual conflict of interest
- Key strategies to avoid conflicts of interest in the first place
- What to do once a competent interest has been identified
- If in doubt don't act
- Keeping a conflicts register
- Case studies – examples of property law conflicts of interest and how to deal with them

Speaker: Claire A Martin, Lawyer, Sydney

4.15 – 4.25pm Panel Comments and Questions

4.25pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference papers and refreshment breaks and lunch.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

Conference Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the conference (as the papers become available), during the conference and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the conference TEN will supply printed copies of the PowerPoint presentations used at the conference.

CPD Units/Points

NSW lawyers: 10 units (including the 3 compulsory subject units)

The Conference Venue

Swissotel Sydney

68 Market Street, Sydney

Reservations: 1-800 121 043

Conference Dress

Smart casual attire is suitable for the conference.

Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN, and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

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