

# THE 15<sup>TH</sup> ANNUAL NSW PROPERTY LAW CONFERENCE

OUR REGULAR TWO DAY CONFERENCE  
DELIVERED **ONLINE** IN FOUR PARTS  
**OVER FOUR HALF DAYS**

**10**  
**CPD UNITS**  
INCLUDING  
COMPULSORIES

## **Part 1: Keeping Ahead of the Changes**

Thursday 25 February 2021 [10am to 12.45pm]

## **Part 2: Making and Breaking the Contract**

Friday 26 February 2021 [10am to 12.45pm]

## **Part 3: Compliance Issues in Practice**

Thursday 4 March 2021 [10am to 12.45pm]

## **Part 4: 3 Compulsory CPD Subjects**

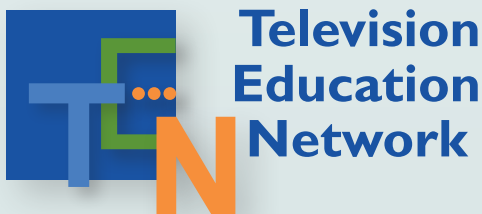
Friday 5 March 2021 [10am to 1.15pm]

### **FEEDBACK FROM LAST YEAR'S CONFERENCE:**

*"The topics are great for practitioners who operate almost exclusively in property."*

*"Subjects were well chosen and relevant to my practice. I stayed until the end, and this is a strong indication of satisfaction. Thank you for your efforts."*

*"Practical take aways from most sessions, effective speakers and comprehensive papers."*



Leaders in online CPD for lawyers

# PART 1: THURSDAY 25 FEB 2021

**CHAIR: MARK EVANS, SENIOR ASSOCIATE, COLIN BIGGERS & PAISLEY, SYDNEY**

**THEME: KEEPING AHEAD OF THE CHANGES**

**10:00 – 10:05am**

**Introduction and welcome**

**10.05 – 10.45am**

**Session 1: Practice and Procedure in Conveyancing: Key Developments and Recent Updates**

It's never a dull moment in the conveyancing world and the usual judicial and legislative developments have been supplemented by process changes arising as a result of the impact of COVID-19 on practice and procedure. This session will provide an overview of some key legislation, cases and important changes in the sector, including:

- Rule changes to contracting, witnessing and other conveyancing procedures
- Standard Contract of Sale amendments/new edition
- New rules for the issuing of occupation certificates
- Off the Plan sales disclosure requirements
- The impact of the decision in *Deligiannidou v Sundarjee* [2020] NSWSC 437 on funds transfer
- Developments in PEXA practice

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

**10.45 – 10.55am Questions and Discussion**

**10.55 – 11.35am**

**Session 2: Tax, Duty and Other Charges: Developments and Updates in the Property Industry**

The usual changes to taxes, duties and other revenue raising financial imposts have been recently supplemented by financial relief resulting from the impact of Covid-19 on both the financial and property markets. This session will provide an update on these changes at both a state and federal level, including:

- Removal of the main residence CGT exemption for non-residents
- CGT Withholding tax for foreign residents
- Changes to GST withholding rules
- Strata building bonds for developers
- Stamp duty changes for first home buyers
- Changes to the Duties Act for options
- Land tax reductions for landlords
- State Revenue Legislation Amendment (COVID-19 Housing Response) Bill 2020 – concessions for land tax and duty on specific transactions
- State Government proposal for stamp duty phase-out

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

**11.35 – 11.45am Questions and Discussion**

**11.45 – 11.55am**

**Short Break**

**11.55 – 12.35pm**

**Session 3: Key Developments and Recent Updates in Commercial Leasing Law and Practice**

Notwithstanding that COVID-19 has had caused significant upheaval in the leasing sector, standard leasing processes and relationships continues to be the subject of legislative change and case law. This session provides practitioners with an overview of developments in the industry, including:

- An overview of the legal principles considered in recent retail and commercial lease cases and how these cases apply to day to day leasing practice
- This session will also highlight recent changes in retail leasing practice including the new NSW Retail Tenant's Guide
- Overview of recent cases dealing with leasing issues relating to the COVID 19 pandemic and how to implement these in your leasing practice

*Speaker: Anthony Herro, Principal, Herro Solicitors, Sydney*

**12.35 – 12.45pm Questions and Discussion**

**12.45pm**

**Part One Close**

# PART 2: FRIDAY 26 FEB 2021

**CHAIR: DEBORAH LINWOOD,  
PARTNER, ACCREDITED SPECIALIST -  
WILLS & ESTATES LAW AND  
PROPERTY LAW, TEECE HODGSON &  
WARD, SYDNEY**

**THEME: MAKING AND BREAKING THE  
CONTRACT**

**10:00 – 10:05am**

**Introduction and welcome**

**10.05 – 10.45am**

**Session 4: Mind the Gap: Looking Beyond the Disclosure Obligations in Residential Property Purchases**

Despite recently tightened regulations concerning disclosure to purchasers in off the plan sales, there remain gaps where disclosure is not mandated, resulting in purchaser ignorance of potentially significant matters. This session will examine what some of these gaps are and provide advice to practitioners about protecting at-risk purchasers, including:

- The doctrine of caveat emptor balanced with statutory obligations of disclosure – does it provide sufficient protection to a purchaser?
- What further investigations should a purchaser make and when? A discussion of:
  - Land contamination: *Curtain v Kirk* [2019] QSC 317
  - Pest and building condition reports
  - Building certificates and approvals
  - Planning restrictions and road proposals
  - Boundaries and land dimensions
  - Defects and cladding issues
- How far do statutory warranties fill in the gaps?
- When can failure to make non-mandated searches be professional negligence?
- Tips for minimising your client's risk – additional searches and title insurance

*Speaker: Bronwyn Scott, Special Counsel, Hall & Wilcox Lawyers, Sydney*

**10.45 – 10.55am Questions and Discussion**

**10.55 – 11.35am**

**Session 5: Boomers Beware: Providing Advice on Residential Property Options for the Older Generation**

Down-sizing has become a buzz word for older Australians seeking to avoid both the burden of a large family home and make interim arrangements before a possible movement into aged care. Several options exist, but each require the provision of legal advice to minimise risk and maximise both financial and emotional outcome. This session will explore these options and the associated risks, including:

- Selling the family home to fund a move – financial consequences for pensions and other tax considerations
- Back yard co-living arrangement issues:
  - Title and tenure risks
  - Gift or loan?
  - Ongoing responsibility for maintenance and improvements
  - What happens upon move or death? Tying up the loose ends
  - Key agreement essentials
  - Unpacking the new CGT exemption under 2021 Federal Budget
- Retirement villages and other independent living accommodation:
  - Am I on the title?
  - Disclosure obligations
  - Cooling off rights and settling in periods
  - Fees, rights and obligations
  - Improvements, capital gains and rights on sale

*Speaker: Dean Cloughton, Principal, Coleman Greig Lawyers, Sydney*

**11.35 – 11.45am Questions and Discussion**

**11.45 – 11.55am**

**Short Break**

# PART 2: FRIDAY 26 FEB 2021

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11.55 – 12.35pm

## Session 6: Contract Termination in a Volatile Market

Uncertain economic times have led to volatile market conditions and a consequential rise in purchasers seeking to terminate their contracts. This session examines a number of scenarios and practical steps to minimise risk and manage the fallout when a purchaser seeks to terminate the contract, including:

- Setting the scene – repudiation and rescission explained
- Rights of rescission under the Standard Contract for the Sale and Purchase of Land
- Common law rights – the Flight v Booth principle: Smogurzewski v AIT Investment Group Pty Ltd [2020] NSWSC 490; Victorsen v Easy Living Holdings Pty Ltd [2019] NSWSC 1721
- Rights of rescission for a change to a “material particular” in off the plan contracts – when does it apply?
- Application of the Australian Consumer Law – can the misleading and deceptive conduct provisions support a rescission claim?
- Breach of prescribed statutory warranties in the Conveyancing (Sale of Land) Act
- The doctrine of frustration – is it an option?
- Rescission or damages? Factors to weigh up in making an election
- Drafting tips for special conditions and other strategies to enable and protect purchasers.

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

12.35 – 12.45pm Questions and Discussion

12.45pm

Part Two Close

# PART 3: THURSDAY 4 MARCH 2021

**CHAIR: SHAH RUSITI, PARTNER,  
ACCREDITED SPECIALIST, BUSINESS  
LAW, TEECE HODGSON AND WARD  
SOLICITORS, SYDNEY**

**THEME: COMPLIANCE ISSUES IN PRACTICE**

**10:00 – 10:05am**

**Introduction and welcome**

**10.05 – 10.45am**

**Session 7: Red Flags and Dodging Bullets in Caveat Lodgement**

As a result of process changes and a recent decision of the NSW Supreme Court, the responsibility for making a good and valid claim to a caveat has shifted from the client to the PEXA user who certifies and lodges the caveat. This session will provide a deep dive into caveats and what practitioners can do to not only protect their clients but minimise their own risks, including:

- When does a caveatable interest arise? Legislation and relevant cases discussed
- Protecting an interest or a device to extract an advantage? The importance of doing the due diligence before embarking on caveat lodgement: *Boensch v Pascoe* [2019] HCA 49; *Mayrin DM Pty Ltd v Kaiyu Deng* [2019] NSWSC 1552
- Why an assessment of the effect of the caveat is important
- Removing a caveat – withdrawal, lapse and court orders
- The new normal – caveat registration by “tick a box”
- How PEXA has changed practice and risk – a study of the decision in *Guirgis v JEA Developments Pty Ltd* [2019] NSWSC 164 and its implications for PEXA users
- The legal and other consequences of improperly lodging a caveat
- Practical guidance for practitioners to minimise risk in caveat registration.

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

**10.45 – 10.55am Questions and Discussion**

**10.55 – 11.35am**

**Session 8: Not in My Back Yard: Picking your Easement Battle**

The creation and exercise of an easement can be a very sore point between neighbours. An understanding of the nature of an easement and the rights it provides is essential to ensuring your client's rights are appropriately protected and advised. This session will explore key issues in easement creation and rights, including:

- Determining when an easement needs to be created and application requirements under the Conveyancing Act 1919
- Creation rights clarified: case study of *Aussie Skips Recycling Pty Ltd v Strathfield Municipal Council* [2020] NSWLEC 22
- Other forms of easement creation and a case study of *Campbell v Hamilton* [2019] NSWCA 22
- What is required to oppose an easement or seek removal or variation?
- Easement access, maintenance and interference – determining party rights, responsibilities and liabilities
- Tips and traps for easement relationship management.

*Speaker: Sydney Jacobs, Barrister & Accredited Mediator, 13 Wentworth Chambers, Sydney*

**11.35 – 11.45am Questions and Discussion**

**11.45 – 11.55am**

**Short Break**

**11.55 – 12.35pm**

**Session 9: Proceed with Caution: Property Purchases by SMSFs**

At a time when bricks and mortar are seen as a secure alternative to stock market volatility, thoughts turn to property investment. This session will explore the practical issues associated with property purchases by a SMSF including what practitioners need to know and advise their clients before the deal is done, including:

- Property purchases and property development activities – checking the trust deed
- What are the different rules for investment in commercial and residential property?
- Who is the purchaser? Entity issues and adverse tax consequences for getting it wrong
- Nominations and substitute purchasers
- The importance of the order of signing documents
- Multiple purchasers – joint tenants or tenants in common?
- Borrowing entity and other financial
- Stamp duty and GST liability
- Working with your client's accountant/financial adviser

*Speaker: Lisa Cahill, Partner, Fusion Partners Central Coast, NSW*

**12.35 – 12.45pm Questions and Discussion**

**12.45pm**

Part 3 Close

# PART 4: FRIDAY 5 MARCH 2021

**CHAIR: NATALIE BRYANT, PARTNER,  
CORRS CHAMBERS WESTGARTH,  
SYDNEY**

**THEME: CPD COMPULSORY SUBJECTS**

**10:00 – 10:05am**

**Introduction and welcome**

**10.05 – 10.55am**

**Session 10: Professional Skills**

## ***Property Options: Tips for Drafting Water-Tight Agreements***

Options agreements can provide advantages to both vendors and investor/developers in uncertain times, subject to precise drafting and understanding by both parties. This session provides a deep dive into what an option agreement should contain, and what advice you need to give your client to minimise risks down-track, including:

- The pro's and con's of option agreements for vendor and purchasers
- Types of options considered and when they are applicable:
  - Call
  - Put
  - Put and Call
- Which option arrangement is right for your client?
- Key elements of an option agreement
- Calculating the option fee and purchase price
- Factors to take into account in specifying the option period
- Should the purchaser lodge a caveat?
- How to determine option exercise dates
- Assignment and other essential clauses
- Stamp duty liability and tax implications of entering into an option agreement
- Tips for options agreement terms in a volatile property market

*Speaker: Dr Allison Stanfield, Solicitor Director, SG Legal Services, Sydney*

**10.55 – 11.05am Questions and Discussion**

**11.05 – 11.55am**

**Session 11: Practice Management & Business Skills**

## ***Building a Profitable Property Law Practice***

Many factors impact profitability. It's not just about working harder; you need to act smarter. In an uncertain economic climate, it has never been more important for practitioners to know how they can build – and maintain – a financially healthy property law practice. It covers:

- Strategies for individual lawyers to increase profitability
- Understanding the key drivers of financial success
- Impact of brand and people on profitability
- Improving your visibility and credibility
- Setting appropriate financial and activity targets
- Use of client and staff surveys

*Speaker: Alistair Marshall, Director, Professional Services BD, Sydney*

**11.55 – 12.05pm Questions and Discussion**

**12.05 – 12.15pm**

**Short Break**

**12.15 – 1.05pm**

**Session 12: Ethics**

## ***Client Identification and Other Ethical Dilemmas in Property Law***

Property lawyers have a professional and ethical obligation to take reasonable steps to identify their client. While it sounds simple in theory, challenges can arise in practice. This session looks at the practical ways to deal with the identification problems and how to avoid other key ethical risks. It covers:

- Who is the client? Who are you taking instructions from and why does it matter?
- Developing appropriate policies on VOI – best practice guidance
- Does the client have capacity? Ethical considerations when determining if your client has capacity and appropriate alternatives
- Proof of identity where an entity is the client
- Reasonable steps to establish authority to instruct
- When should you cease acting? Ethical dilemmas involving client identity issues

*Speaker: Ben Bradley, Barrister, Greenway Chambers, Sydney*

**1.05 – 1.15pm Questions and Discussion**

**1.15pm Conference Close**

# GENERAL INFORMATION

## Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference materials and recordings of each of the sessions provided after the conference.

## Conference Materials

Access to the conference materials will be available online to all delegates. Access will commence in the lead-up to the conference as the materials become available. Following the conference delegates will have access to the conference materials online with no expiration date.

## Lawyers - CPD Units/Points

**NSW Lawyers:** 10 CPD units (7 substantive law + 3 CPD compulsory subjects)

## CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

## Online Conference Delivery

The conference will be delivered online. Delegates will receive a link to login and attend each of the 4 parts of this online conference.

This online conference will be delivered in a style similar to a live conference. There are Chairs for each part to introduce speakers and facilitate question time and the online portal allows delegates to pose questions to the speakers via the chat facility.

## 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.

If a registration was purchased as part of a group discount the cancellation of that registration may affect the discount level for other members of the group. The amount of the refund will be adjusted to recoup any adjustment required to the overall registration fees for that group

## 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, public health emergencies, natural disasters, and other Acts of God.

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# REGISTRATION FORM TAX INVOICE\*

Registration is simple; complete the form below and fax or post your registration to us or register online.

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Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **15th Annual NSW Property Law Conference** – a 2-day online conference to be delivered over 4 half day mornings on 25th & 26th February 2021 and 4th & 5th March 2021 [conf code: SPLMR21]

[ ] **Discount Registration** – for registrations made on or before 12 February 2021 – **\$1650** (\$1500 + \$150 GST)

[ ] **Full Price Registration** – **\$1815** (\$1650 + \$165 GST)

[ ] **Subscriber First Discount Registration** – I am a Subscriber First member and entitled to a **10% discount** off the full registration fee – **\$1633.50** (\$1485 + \$148.50 GST)

The papers from this conference will be available in electronic form approximately 1 week after the conference has been held. You can pre-order the papers now online via our website at [www.tved.net.au](http://www.tved.net.au). The papers are **\$198** (\$180 + \$18 GST) (Code: PSPLMAR21).

**Multiple registration discount?** Discounts are available for multiple registrations: The more you send, the greater the discount. You can access the discount by registering using the “multiple registrations” option online, or contact our Conference Manager, Jenna Pickrell, to organise your registrations. [jenna@tved.net.au](mailto:jenna@tved.net.au) or phone (03) 8601 7729.

- 3 registrations – **5% discount** for each delegate
- If you register 4 people at the same time you are entitled to a **10% discount** for each delegate
- If you register 5 people or more people at the same time you are entitled to a **15% discount** for each delegate.

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