

PROVIDING YOUR

10

CPD UNITS

INCLUDING THE  
COMPULSORY  
SUBJECTS.

# THE 16<sup>TH</sup> ANNUAL NSW PROPERTY LAW CONFERENCE

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

**Part 1: Nuts and Bolts of Property Transactions**

Thursday 24 February 2022 [10am to 12.45pm]

**Part 2: Tax and Duty Issues in Property**

Friday 25 February 2022 [10am to 12.45pm]

**Part 3: Recent Reforms and Developments**

Thursday 3 March 2022 [10am to 12.45pm]

**Part 4: 3 Compulsory CPD Subjects**

Friday 4 March 2022 [10am to 1.15pm]

**Feedback from last year's conference:**

*"Topics excellent, speakers equally so."*

*"Good to do CLE over a period of 4 days and have time to digest all the information. Effective speakers, useful papers Thanks."*

*"Very professional and efficient, as usual."*



Leaders in online CPD for Lawyers & Accountants

# PART 1: THURS 24 FEBRUARY 2022

## THEME: NUTS AND BOLTS OF PROPERTY TRANSACTIONS

**10:00 – 10:05am** Introduction and welcome

**Part 1 Chair:** *Robert Schneider, Consultant, HWL Ebsworth Lawyers, Sydney*

**10.05 – 10.45am**

### **Session 1: NSW Conveyancing Law and Procedure: Recent Developments and Reforms**

It's never a dull moment in the world of conveyancing. This wrap-up session examines the key challenges in conveyancing law and procedure over the last 12 months, including:

- E-conveyancing and electronic execution of documents – where are we up to?
- What risks arise over interoperability now that 100% lodgement applies?
- Rule changes to contracting, witnessing and other conveyancing procedures
- Review of the Environmental Planning and Assessment Regulation 2000
- The proposed Property Tax
- Case update, including SPIC Pacific Hydro v Chief Commissioner of State Revenue (NSW) 2021; Alexakis v Wan [2021] NSWSC 367

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

**10.45 – 10.55am** Questions and Discussion

**10.55 – 11.35am**

### **Session 2: Vendor Disclosure and Warranties – Law and Practice Update**

The extent of vendor disclosure obligations on property sales and the scope of vendor warranties are examined in this session. It includes:

- Operation of ss52A & 66 R Conveyancing Act statutory disclosure – an overview
- Categories of documents that must be disclosed
- The nature of prescribed warranties as part of disclosure obligation
- The extent of obligation to state warranties clearly
- Implied terms and disclosure – relevance to property transactions
- Aboriginal heritage issues and the disclosure obligation
- Vendor disclosure obligations at common law
- Extent of purchaser rescission rights for defective disclosure
- Case study – Disclosure and contaminated land
- Case report – Mehmet v Carter [2020] NSWSC 413

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

**11.35 – 11.45am** Questions and Discussion

**11.45 – 11.55am** Short Break

**11.55am – 12.35pm**

### **Session 3: When Off the Plan Goes Off the Rails**

Off the plan property purchases are often fraught with risk. However, with careful planning and advice these risks can be managed. This practical session examines the key issues, including:

- Disclosure requirements for off-the-plan contracts that can trip people up
- The extent of disclosure prior to contracts being signed
- Cooling off periods - inclusion of cooling off warning notice
- The disclosure statement and the draft plan – what it must show
- Obligation to notify changes to material particulars and rights to end contract
- Supply of registered plan to purchaser prior to settlement
- Right of rescission or claim compensation – when can this arise?
- Controls over sunset clauses explained
- Case update

*Speaker: Alira Muchiri, Senior Lawyer, Turnbull Hill Lawyers, Newcastle*

**12.35 – 12.45pm** Questions and Discussion

**12.45pm**

**Close**

# PART 2: FRIDAY 25 FEBRUARY 2022

## THEME: TAX AND DUTY ISSUES IN PROPERTY

**10:00 – 10:05am** Introduction and welcome

**Part 2 Chair:** *Selwyn Black, Partner, Carroll & O'Dea Lawyers, Sydney*

**10.05 – 10.45am**

### **Session 4: Regulator on the Warpath: Foreign Surcharge Duty and Land Tax**

Increased compliance activity by Revenue NSW has shown that foreign surcharges are firmly within the regulator's sights. This session looks at how to properly detect and advise clients in this troublesome area, and the potential liability issues that practitioners might face, including:

- Rules of foreign buyers of investment property – an overview
- Who is a foreign buyer and what rules apply for foreign home buyers?
- What about where property bought by bought by a trust?
- Key traps to watch out for
- Getting the due diligence right from the start
- Penalties for failure to disclose someone is a foreign person
- Understanding the audit and compliance process
- When will property lawyers be in the firing line?

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

**10.45 – 10.55am** Questions and Discussion

**10.55 – 11.35am**

### **Session 5: GST Conundrums for the Property Law Practitioner**

Clients regularly undertake property transactions without giving much thought to the possible negative GST consequences of a transaction. Even though the GST regime has been in place for some time, uncertainty remains. This session aims to clarify some of the uncertainty that can arise in practice and covers the following areas:

- Does my client's property development venture constitute an enterprise for GST purposes?
- Tips and traps with the GST withholding regime
- Analysis of the registration rules
- Analysis of concessions and interaction with practical scenarios (e.g. margin scheme, going concern)
- Change of use adjustments from taxable supply of new residential premises to input taxed supply of residential rent
- Examination of recent cases

*Speaker: Matthew Cridland, Partner, K&L Gates, Sydney*

**11.35 – 11.45am** Questions and Discussion

**11.45 – 11.55am** Short Break

**11.55am – 12.35pm**

### **Session 6: Put and Call Options: On the Rise But So Are the Risks**

Put and call options are on the increase and can be a convenient way to delay payment of stamp duty. However, recent case law development has highlighted risks associated with their use. This session looks at the key issues, including:

- Put and call options in property transactions – when to use
- A review of ss66U and s66T of Conveyancing Act 1919
- Cooling off periods applying to purchaser/develop put option
- The return of option fees based on right to rescind – how is this possible?
- Protecting the vendor – obtaining purchaser signature on s66w certificate
- Key lessons from use of residential put options
- Case update, including BP 7 P/L v Gavancorp P/L [2021] NSWSC 265

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

**12.35 – 12.45pm** Questions and Discussion

**12.45pm** Close

# PART 3: THURSDAY 3 MARCH 2022

## THEME: RECENT REFORMS AND DEVELOPMENTS

**10:00 – 10:05am** Introduction and welcome

**Part 3 Chair:** *Lee-Ann Walsh, Barrister, Chalfont Chambers, Sydney*

**10.05 – 10.45am**

### **Session 7: Community Title and Strata Schemes: Practical Changes in the Spotlight**

This session looks at the legislative changes impacting community title and strata schemes and how these reforms are playing out in practice. It covers:

- New community title legislation – what are the changes and their effects
- Alignment of community with strata schemes – how will this work?
- New democratic governance arrangements
- What are the associated regulations and their effects?
- Issues emerging from the Ministerial review of the Strata Acts (SSMA s276; SSDA s204)
- Inspection by building consultants who report on defects – what does this mean?
- Time frames to rectify defects
- Obligation of bond payment at time of development consent
- If defects not rectified can owner's corporation use bond?
- Strata schemes inspection panel – where does this fit in?
- Case study - Enforceability of strata bylaws under the changes

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

**10.45 – 10.55am** Questions and Discussion

**10.55 – 11.35am**

### **Session 8: Recent Developments in NSW Easements and Restrictive Covenant Law**

This session examines some recent case law developments in easements and restrictive covenants. It also examines interpretation of restrictive covenant clauses. It includes:

#### *Easements*

- Easements under S88K Conveyancing Act 1919 – some key essentials
- Application for easement and cost issues for applicant
- A review of recent NSW case law developments FOR easements
- Case update, including Aussie Skip Recycle P/L v Strathfield Municipal Council [2020] NSWCA 292

#### *Restrictive Covenants*

- Interpreting the restrictive covenant – consent not 'unreasonably withheld'
- Case study – Is there an intersect between restrictive covenants and easements?
- A review of recent NSW case law developments for restrictive covenants
- Case update, including The Owners Strata Plan 85044 v Murrell [2020] NSWSC 20

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

**11.35 – 11.45am** Questions and Discussion

**11.45 – 11.55am** Short Break

**11.55am – 12.35pm**

### **Session 9: Retail and Commercial Leasing in NSW: Navigating the Current Landscape**

This session provides an up-to-the-minute primer on recent case law developments in retail and commercial leasing and the key lessons they hold for practitioners. Cases that may be covered include:

- Cameli Pty Ltd v Place Management NSW [2020] NSWSC 1132
- NB2 Pty Ltd v PT. Ltd [2018] NSWCA 10
- Sneakerboy v Georges Properties Pty Limited [2020] NSWSC 996 (No.1)
- Sneakerboy v Georges Properties Pty Limited (No 2) [2020] NSWSC 1141 (No.2)
- Macquarie Publications Pty Ltd v Coles Supermarkets Australia Pty Ltd [2021] NSWSC 405
- MIR Holdings P/L & Anor v Marina Square Retail P/L [2020] NSWSC 1418

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

**12.35 – 12.45pm** Questions and Discussion

**12.45pm**

**Close**

# PART 4: FRIDAY 4 MARCH 2022

## THEME: 3 CPD COMPULSORY SUBJECTS

**10:00 – 10:05am** Introduction and welcome

Part 4 Chair: *Mark Swan, Special Counsel, Mills Oakley, Sydney*

**10.05 – 10.55am**

**Session 10: Practice Management & Business Skills**

### *Cyber-Fraud and More: Risk Management in Electronic Property Transactions*

With all the benefits of electronic and remote working there are also risks, and conveyancers need to be vigilant to spot red flags and proactively manage potential loopholes and exploitation of gaps in the system. This session provides a practical guide to exercising caution and effectively managing risk exposures in electronic processes, including:

- Why risk management is essential and tools for undertaking a risk analysis
- How PEXA has moved the goalposts on roles and responsibilities – *Guirgis v JEA Developments Pty Ltd [2019] NSWSC 164*
- The consequences of practitioner responsibilities for certifications and statements in PEXA
- Who is your client? The risks of VOI and identity agent responsibility
- Tips, traps and good practice for using electronic signatures and remote witnessing
- Tips for maintaining vigilance in transactions involving overseas based parties
- Record-keeping essentials and other key elements of proactive risk management
- Cyber-fraud and system protection – lessons from *Deligiannidid v Sundarjee [2020] NSWSC 437*
- Suspect fraud? Immediate steps to take to minimise impact
- Why insurance won't always come to the rescue
- Simple and essential practices and procedures that will make a difference

Speaker: *Garth Brown, Principal, Brown & Brown Conveyancers, Sydney*

**10.55 – 11.05am** Questions and Discussion

**11.05 – 11.55am**

**Session 11: Professional Skills**

### *Managing Changing Circumstances Between Contract and Settlement in Property Matters*

What can go wrong between signing a contract and settlement? Turns out, quite a bit. While most settlements stay on track, there can be a significant change that will severely impact the transaction. This practical session will examine some of those circumstances and provide you with the necessary professional skills to get the matter back on track or head down a different path. It covers:

- What happens if one of the parties dies before completion?
- Where two parties own the property jointly, how will the death of one impact the sale?
- Can a purchaser be compelled to complete the contract where time delays may be significant?
- Negotiating strategies to consider when liaising with vendors or purchasers in the event of death
- Drafting special conditions to deal with death and other potential situations, including time extensions in such situations
- Doing due diligence on the financial health of your client

Speaker: *Eva Vicic, Partner, McCullough Robertson, Sydney*

**11.55 – 12.05pm** Questions and Discussion

**12.05 – 12.15pm** Short Break

**12.15 – 1.05pm**

**Session 12: Ethics & Professional Responsibility**

### *Ethics in Property Law*

This session is a practical update on the key ethics obligations of property practitioners and the common, and not-so-common, ethical challenges that can arise in practice. It covers:

- Understanding legal profession rules on ethics in property transactions
- What conflict of interest dilemmas can arise on property matters
- Representing multiple interests in property transactions
- Relying on real estate professionals – tips and traps to watch
- Disclosure and ethics in professional practice
- Ethics of communication to clients on property matters
- When issues around delay become an ethical problem
- Tales from the crypt: ethics hearings on practitioners

Speaker: *Sara Hatcher, Principal, Russell Kennedy Lawyers, Sydney*

**1.05 – 1.15pm** Questions and Discussion

**1.15pm**

Close

# GENERAL INFORMATION

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## Conference Registration Fee

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The registration fee includes attendance at the conference, conference papers and recordings of all sessions.

## Online Conference Delivery

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

## Conference Papers

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TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

## CPD

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

## CPD Certificate

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

# TERMS AND CONDITIONS

1. In these terms,
  - a. "TEN" means Television Education Network Pty Ltd
  - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
  - c. "Plan" means the COVID-Safe Plan for the conference described below.
  - d. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
  - e. "live conference" means a conference other than a recorded conference.
  - f. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
  - g. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
  - h. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

## General – all conferences

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.

## COVID SAFE PLAN – FACE TO FACE CONFERENCES

### What happens if you are diagnosed with COVID-19 or you are otherwise unwell?

5. If the conference is held face to face, TEN will conduct the conference in accordance with a COVID Safe Plan. You agree to comply with that Plan at the conference. If you fail to comply with the Plan, you agree to leave the conference immediately at the request of a TEN staff member or venue staff member. If you leave under these circumstances, you will not be entitled to a refund of any part of the registration fee. TEN will not be responsible for any travel or accommodation costs or fees incurred by you in relation to the conference or as a result of you leaving the conference early.
6. The COVID safe plan will prevent your attendance at a face to face conference if you are diagnosed with COVID-19 prior to or during the conference and the infection has not been cleared by two negative PCR tests, if you have a fever (ie raised temperature) at the time of registration or if you have a respiratory illness (including a cold or cough) at the start of or during the conference. In these circumstances:
  - a. You will be entitled to attend the live online version of the conference and/or recorded online version if that is offered; or
  - b. If not, you will be entitled to a full refund of the registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

## Conversion of face to face conferences to live online conferences

7. If the conference is being held face to face or face to face AND online, TEN reserves the right to convert the conference on no less than 24 hours' notice to a solely online conference or to cancel the conference or to postpone the conference to a later date if TEN determines that it is unable to hold the conference face to face on the date/s advertised for any one or more of the following reasons:
  - a. State or national border closures
  - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
  - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
  - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
8. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
9. If TEN converts the conference from face to face to online or postpones the conference and as a result you are not able to attend you will be entitled to a full refund of registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

## Copyright

10. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
11. You are entitled to use those materials for private study and research only.
12. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
13. You are entitled to watch a conference for private study and research only.

## Conference cancellation by TEN – all conferences

14. TEN reserves the right to cancel a conference for any reason.
15. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

## Cancellation by You – all conferences

16. Refunds for registration cancellation by you other than under Clause 6(b):
  - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
  - b. Otherwise, no refund.

## Governing Law – all conferences

17. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.

# REGISTRATION FORM **TAX INVOICE\***

Registration is simple; complete the form below and fax or post your registration to us or register online.  
 Television Education Network Pty Ltd, (ABN 19 052 319 365)  
 GPO Box 61, Melbourne, Victoria 3001  
 Fax (03) 9670 0588 Phone (03) 8601 7700 Enquiries Jenna Pickrell (03) 8601 7729  
 Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **16th Annual NSW Property Law Conference Online** – a 2-day conference to be delivered over 4 half day mornings on 24 & 25 February 2022 and 3 & 4 March 2022 [conf code: SPLMAR22]

**Discount Registration** – for registrations made on or before 11 February 2022 \$1683 (\$1530 + \$153 GST)

**Full Price Registration** – **\$1848** (\$1680 + \$168 GST)

**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.

**One-day only?** We do accept bookings for attending one day only (either day 1 or day 2). To organise a one-day booking, please contact Jenna Pickrell (details above).

**Conference Papers** The papers from this conference will be available in electronic format 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: PSPLMAR22).

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