



18TH ANNUAL NSW PROPERTY LAW CONFERENCE ONLINE

Our regular two day conference delivered online in four parts

Part 1: Buying and Selling Real Property

Thursday 22 February 2024 [10am to 1.05pm]

Part 2: The Property Law Toolkit

Friday 23 February 2024 [10am to 1.05pm]

Part 3: Property Rights and Disputes

Thursday 29 February 2024 [10am to 1.05pm]

Part 4: Ethics, Professional Skills and Practice Management & Business Skills

Friday 1 March 2024 [10am to 1.20pm]



Leaders in online CPD for Lawyers & Accountants

PART 1: THURS 22 FEBRUARY 2024

THEME: BUYING AND SELLING REAL PROPERTY

10.00 – 10.10am

Introduction and welcome

CHAIR: DEBORAH LINWOOD, PARTNER, ACCS(WILLS&ESTATES) (PROP), TRUST AND ESTATE PRACTITIONER (TEP), TEECE HODGSON AND WARD SOLICITORS, SYDNEY, NSW

10.10 – 10.55am

Session 1: Practice and Procedure in Conveyancing: Recent Developments in NSW

Despite the slow-down in the property market, regulatory changes and other developments continue to keep the industry on its toes. This session will provide an overview of key legislation, cases and other significant changes, including:

- Electronic conveyancing update including process changes and reform timelines
- Update on interoperability - The politics of intervention and the impact of the Electronic Conveyancing (Adoption of National Law) Amendment Act 2022
- The impact of anti-money laundering legislation on property transactions and industry players
- An update on the strata legislation rewrite and introduction of amendments
- Recent cases of interest

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

10.55 – 11.05am Questions and Discussion

11.05 – 11.50am

Session 2: Making the Deposit Count

Deposits are largely negotiable between sellers and buyers of property in NSW, and at a time of economic downturn the acceptance of greater risk in deposit terms can make or break a sale. This session will examine some of the choices each party has when it comes to payment and release of the deposit and the inherent risks, including:

- The legislative requirements including minimum deposit amounts
- What can go wrong will go wrong – cases and examples of deposit forfeiture and return
- Instalment deposits pro's and con's
- Why and when to use a deposit bond
- Drafting tips for deposit contract conditions
- Deposits in off-the-plan purchases
- Factors influence the court discretion under s55(2A) deposit repayment
- Cases including *Luong Din Luu v Sovereign Developments Pty Ltd* [2006] NSWCA 40; *Ringrow Pty Ltd v BP Australia* [2005] HCA 71; *Blanco v Wan* [2021] NSWSC 273; *Retirement Village Bargo Pty Ltd v Anwar* [2023] NSWSC 209; *Dasreef Developments Pty Ltd v Josiv Velkovski* [2017] NSWSC 1698

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

11.50 – 12.00pm Questions and Discussion

12.00 – 12.10pm Short Break

12.10pm – 12.55pm

Session 3: Bigger, Better, Higher: A Legislative and Regulatory Update on Planning, Property Development and Construction in NSW

It has been another busy year for the NSW building industry with a raft of reviews, legislative changes and other significant developments. This session will provide an overview of what's happening in that space, including:

- Planning policy and law changes to support sustainable building practices and increase the supply of affordable housing
- Expanded operation and application of the Design and Building Practitioners Act
- Review of the off-the-plan contracts regime five years in
- Decennial insurance and a new public rating system for developers
- How the Building Bill will impact construction in NSW
- The role and responsibilities of the new NSW Building Commission

Speaker: Dominic Maley, Partner, Maclarens Lawyers, Sydney, NSW

12.55 – 1.05pm Questions and Discussion

1.05pm Close

PART 2: FRIDAY 23 FEBRUARY 2024

THEME: THE PROPERTY LAW TOOLKIT

10.00 – 10.10am

Introduction and welcome

CHAIR: TO BE ADVISED

10.10 – 10.55am

Session 4: Update and Developments in NSW Retail and Commercial Leasing

This session provides an up-to-the-minute primer on the latest trends, case law developments and regulatory changes in the retail and commercial leasing landscape. Key issues examined include:

- Key takeaways from recent case law of importance involving retail and commercial leasing
- Latest legislative updates, commentary and reforms leasing practitioners need to navigate
- Practical tips and advice on latest trends shaping leasing practices

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

10.55 – 11.05am Questions and Discussion

11.05 – 11.50am

Session 5: Keeping Up to Date with NSW Property Taxes and Duties

A change in State government, a tough economy and a challenging year in the building and property sector has seen a raft of changes in property related revenue raising, as well as some interesting cases and rulings. This session will examine recent developments in property tax law, including:

- First Home buyers stamp duty exemption threshold changes
- Surcharge tax for foreign residents' property ownership in NSW and exemptions for some foreign nationals
- Stamp duty liability for specified beneficial property ownership – who is caught and how?
- Revenue Ruling on stamp duty exemption for family farm transfers
- Land tax exemption and primary production – the High Court appeal of the decision in Chief Commissioner of State Revenue v Godolphin [2023] NSWCA 44

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

11.50 – 12.00pm Questions and Discussion

12.00 – 12.10pm Short Break

12.10pm – 12.55pm

Session 6: The Rights and Wrongs of Rights of Way: Insights from Recent Judicial Decisions Involving Easements

Common sense is sorely lacking in many cases dealing with disputes between neighbours about rights of way. With an emphasis on decisions in the Land and Environment Court, this session will examine a number of recent cases and developments and inject some practical strategies into dealing with disputes of this nature, including:

- The right to pass or repass and what it means
- Why rights of way seem to generate so much emotion
- What constitutes “reasonable use” or “unreasonable interference” when it comes to rights of way?
- Consequences of the failure to recognise a right of way
- Associated rights including reasonable repair and maintenance and costs
- When might a right of way become obsolete or abandoned?
- The process for removing a registered right of way
- Creation of new rights of way and setting the terms
- How can the terms of a right of way be changed?
- Lessons from the courts

Speaker: Sydney Jacobs, Barrister, Thirteen Wentworth Chambers, Sydney, NSW

12.55 – 1.05pm Questions and Discussion

1.05pm Close

PART 3: THURS 29TH FEBRUARY 2024

THEME: PROPERTY RIGHTS AND DISPUTES

10.00 – 10.10am

Introduction and welcome

CHAIR: DAVID SACHS, PRINCIPAL, SACHS GERACE LAWYERS, SYDNEY, NSW

10.10 – 10.55am

Session 7: *Betwixt and Between: Changing Circumstances Between Execution and Settlement in Property Sales*

Selling and/or buying a property is a sufficiently challenging exercise, let alone having to deal with a significant change between executing the contract and settlement. This session will provide a guide to the more common issues that might arise between sale and settlement, what to advise your client and the options for both purchaser and seller in such situations, including:

- Property damage risks between sale and settlement – who is responsible?
- Should a purchaser take out insurance on the property upon sale?
- What amount of damage after the contract will impact the rights of a purchaser?
- When can a purchaser rescind for damage and what is the process?
- Who should claim on insurance in the event both parties are insured?
- The risk of early possession and property damage – management tools
- When is negotiating a reduced purchase price an option and factors to consider
- The impact of the death of a vendor or purchaser before settlement, and if joint must the survivor complete?
- Financial impacts and considerations where death or damage has affected the sale including lender concerns
- Cases and examples.

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

10.55 – 11.05am Questions and Discussion

11.05 – 11.50am

Session 8: *Has the Pendulum Swung Too Far? Consumer Rights and Protections in the Spotlight*

From the previous position of caveat emptor, the pendulum has swung heavily the other way since the greater recognition of consumer rights. The disclosure obligations on property vendors and their agents are significant and failures carry heavy penalties and consequences. This session will examine the current state of the law and case examples, including:

- The reach of the Australian Consumer Law and NSW fair trading laws to property purchases
- Spotlight on unfair contract reforms – what do the recent reforms mean for property lawyers?
- Disclosure obligations of NSW real estate agents
- Can vendors be liable for the acts of their agents?
- What are “adverse affectations” in the Conveyancing Act?
- Statutory disclosure requirements for off the plan contracts
- Remedies of the vendor for the misrepresentation of their agent or professional adviser
- Steps to take on becoming aware of a misrepresentation
- Can contractual warranties about inspection and satisfaction put the onus back on the purchaser?
- Cases including *Ripani v Century Legend Pty Ltd* [2022] FCA 242; *Thillagaratnam v Doan* [2022] WASC 185; *Hyden v McGrath Sales Pty Ltd* [2018] NSW ConvR 56-390; *Williams v Pisano* [2015] NSWCA 177; *Bullabidgee Pty Ltd v McCleary* [2010] NSWSC 145

Speakers: Philipa Thomson, Special Counsel, Clayton Utz, Sydney, NSW & Shameela Karunakaran, Senior Associate, Clayton Utz, Sydney, NSW

11.50 – 12.00pm Questions and Discussion

12.00 – 12.10pm Short Break

PART 3: THURS 29TH FEBRUARY 2024

12.10pm – 12.55pm

Session 9: Deadlocked: Forced Sales under s66G Conveyancing Act 1919

In the absence of agreement to sell a jointly owned property, co-owners are able to have their dispute adjudicated through an application to the Supreme Court under the Conveyancing Act. Nevertheless, this can be a costly and technically complex process.

This session will examine the perils and pitfalls of the forced sale application process and assess proactive steps that can be taken to avoid going down this path, including:

- The requirements of a s66G application
- A discussion of the costs of an application and liability for payment
- The mechanics of the application process
- Will the court always grant an application?
- Establishing inequitable grounds and opposing a s66G application
- Can the parties contract out of the application of s66G?
- Assessing unequal contributions to the property value
- Cases including *Ambrus v Buchanan* [2022] NSWSC 1628; *Myers v Clark* [2018] NSWSC 1029
- The value of co-ownership agreements and drafting tips.

Speaker: Tanya Chapman, Senior Associate, Baker Love Lawyers, Newcastle, NSW

12.55 – 1.05pm Questions and Discussion

1.05pm Close

PART 4: FRIDAY 1 MARCH 2024

CPD COMPULSORY SUBJECTS

10.00 – 10.10am

Introduction and welcome

**CHAIR: CAROLYN CHUDLEIGH,
PARTNER, HFW, SYDNEY, NSW**

10.10 – 11.00am

Session 10: *Practice Management*

**Strengthening Your Defences Against Scams,
Phishing and Cyber Security Attacks**

Around 300,000 cyber crimes are committed in Australia every year. Many of these incidents arise not from hacking but from the behaviour of people who fall prey to scams, phishing and other social engineering methods. Lawyers are no exception, with property lawyers particularly vulnerable. This session assists practitioners keep on top of their cyber-security risk by examining:

- The different methods currently employed for scams and the unique risks property lawyers face in practice
- Tips for how to identify scams and fraudulent communications
- Suggestions for systems, policies and steps property lawyers can take to minimise their risk
- Spotlight on cyber security awareness with deposit-taking and release
- Potential consequences that can arise following a breach and what practitioners should do if they suspect a breach
- Lessons from recent examples

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

11.00 – 11.10am Questions and Discussion

11.10 – 12.00pm

Session 11: *Professional Skills*

GST Complexities: A Toolkit for Property Lawyers

GST and property transactions often go hand-in-hand. Despite this, the application of GST legislation and rules are not always simple and can often be an afterthought. GST needs to be on every property lawyer's checklist and considered each and every time. This practical session explores the key issues property lawyers need to navigate, including:

- Understanding when and how GST applies to different types of property and why it matters
- When will an isolated transaction for the sale of a property trigger the need for GST registration?
- Availability of input tax credits for property-related expenses and acquisitions
- The role and applicability of the margin scheme – key issues to consider
- Practical examples and case studies

Speaker: Matthew Missaghi, Managing Partner, Nexis Legal, Melbourne, Vic

12.00 – 12.10pm Questions and Discussion

12.10 – 12.20pm Short Break

PART 4: FRIDAY 1 MARCH 2024

12.20pm – 1.10pm

**Session 12: *Ethics and Professional Responsibility*
Caveat Use and Abuse: Ethical Considerations
for Practitioners**

The complexities in identifying and describing a caveatable interest have long occupied the courts, and further complications have resulted from the move to electronic registration. This session will examine recent developments in caveat law and registration, with a focus on the ethical challenges that can trip up practitioners. Key issues covered include:

- What constitutes a “caveatable interest”? A review of the grounds for lodging a caveat and its intersect with ethical obligations
- Understanding key professional obligations under the Electronic Conveyancing National Law
- Lodging caveats wisely – the who, what, why and how
- When to engage counsel to provide an opinion on lodging caveats
- Ethical dilemmas: opting for an injunction over a caveat – navigating the way forward
- Spotlight on:
 - withdrawing a caveat without instructions
 - terminating the retainer where a caveator will not take a practitioner’s advice
- Making mistakes when lodging caveats - lessons from *Brose v Slade* [2022] NSWSC 1785; *Giurgis v JEA Developments Pty Ltd* [2019] NSWSC 164
- Unpacking the disciplinary consequences for practitioners lodging and maintaining improper caveats over land
- Recent examples, including:
 - *Victorian Legal Services Commissioner v Souki*
 - *Youssef v NSW Legal Services Commissioner*

Speaker: Lee-Ann Walsh, Barrister, Chalfont Chambers, Sydney, NSW

1.10 – 1.20pm Questions and Discussion

1.20pm Close

GENERAL INFORMATION

Conference Registration Fee

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

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 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

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

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.

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