

ULTIMATE

REAL ESTATE SUCCESS
COACHING PROGRAM

SESSION SIX

Legal Aspects of Property






SESSION SIX

LEGAL

YOUR RIGHTS AND OBLIGATIONS

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The information provided is of a general nature only. This is not intended to be a substitute for legal advice. You should take legal and accounting advice specific to your situation before undertaking any structuring, asset protection or succession planning measures.



Gangnam
Legal
Style !

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How do you get the most out of your Professionals?

- 2 Way Street
- Service or Product?
- Selection
- Scope of work
- Costs
- Trust relationship



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When should you contact a Legal Professional?

What is the difference between a Solicitor doing the conveyancing on the purchase of a property and a Conveyancing Agency?



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What is the Legal Process for Buying a Property?

- What are the pre-contract legal requirements?
- Does your Solicitor need to see the Contract prior to signing a Residential Contract?
- Proper execution of contract and electronic signatures

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Is there anything different for Commercial Contracts?

- GST
- Leases
- Tenant Options to purchase
- Tenant ownership of fittings
- Town Planning & Zoning
- Contamination / Asbestos



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What Clauses need to be in a purchase contract?

- Building and Pest
- Finance
- Due Diligence
- Site Inspection/Survey



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Examples of Insufficient Clauses

SPECIAL CONDITIONS

Contract is subject to a 30 day due diligence clause from Contract Date.
Vendor is entitled to a 30 day cooling off period.

SPECIAL CONDITIONS

The Vendor includes that part of the Contract:

1. Schedule A - Special Conditions
2. Schedule B - List of Buildings and Contents
3. Schedule C - Building Plan

4. Section 30 - ZONING, BAY, TENTS, UTILITIES, COUNCIL RATES

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Examples of Insufficient Clauses

Handwritten text on a document:

THIS CLAUSE IS SUBJECT TO ANY CONDITIONS, EXEMPTIONS, LIMITATIONS AND OTHER TERMS SET OUT IN THE RELEVANT PARTS OF THE CONTRACT AND TO ANY CONDITIONS, EXEMPTIONS, LIMITATIONS AND OTHER TERMS SET OUT IN THE RELEVANT PARTS OF THE CONTRACT AND TO ANY CONDITIONS, EXEMPTIONS, LIMITATIONS AND OTHER TERMS SET OUT IN THE RELEVANT PARTS OF THE CONTRACT...

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Examples of Insufficient Clauses

Printed text on a document:


4. Building and Pest Inspections
 (a) The Buyer's right to terminate the Contract of Sale, pursuant to Clause 4.2 of the Terms of Contract, is restricted to the extent set out below:
 (i) A Building Inspection Report may only be unsatisfactory to the Buyer where that report reveals and identifies structural defects in the dwelling on the Property;
 (ii) A Pest Inspection Report may only be unsatisfactory to the Buyer where that report reveals and identifies live pest infestation in the dwelling and any associated structures physically connected to the dwelling.

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Example of incorrect Boundary

State Differences

- NSW has a different contracting process
- Do not assume processes and conditions are similar across the country




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Contracts cont.

- How do Cooling Off Periods work?
- How much do you lose?
- Can the cooling off periods be extended by agreement?



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Contracts cont.

- Settlement time frames (working days)
- Access requirements during contract phase
- Settlement occupancy
- And or Nominee Clauses
- Deferred settlements and subject to council approvals
- Sunset clauses




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When should you take out Insurance on a Property?

Who is liable and from when?



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What searches are necessary?

- Title
- Approvals and Structures
- Boundaries
- Main Roads / Railways
- Bankruptcy
- Others??




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Rights and responsibilities at settlement

- Pre Purchase Inspections
- What if bank delays settlement?
- What else can happen?




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Pre Settlement Inspections


- Before contract
- Pre Settlement Inspection



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Pre Settlement Inspections



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How can you best prevent Joint Ventures ending badly?

- **Structure** – SPV/Unit Trust
- **Agreements** – JV /Shareholder / Unitholders


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Contract Considerations

- What is the difference between Joint Tenants and Tenants in Common?
- What happens in the case of divorce, death and bankruptcy?



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Options

DEFINITION
 The buyer has a *right, but not the obligation* to buy a something from the seller at a certain time in the future for a certain price

TYPES

- Call Options
- Put and Call Options



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Options

WHY USE AN OPTION?


- Delaying a purchase to a new financial year
- You don't know or have your buying entity ready yet.
- You want to secure the site, but don't want to pay for or own it yet.
- On sell to a third party and avoid the stamp duty.
- You want to add value/develop the site and on sell

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Options

COMMON CLAUSES

- Preconditions -DA, DD, Access, Builder Terms
- Call Option Fee
- Security Deposit
- Call Option Expiry Date vs Put Option Expiry Date
- Common obligations - who maintains and insures the premises during the option term
- The contract is annexed to the back of the option




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Options

COMMON CLAUSES

- Nominee Clause
- Marketing of lots
- Uplift in price when on selling
- Security - Caveat

What happens when you exercise your option - The process




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Options

THINGS TO BE CAREFUL OF

- What conditions you require: subject to DD, DA, Access
- Timelines – the option period
- Getting paid – the margin
- GST
- Getting the right to market the lots
- Caveat as security



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The key to safe contracting is a good solicitor!




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How we can help?

- GIVE US A CALL EARLY IN THE TRANSACTION
- So we can talk to you about some of the issues you MAY encounter and guide you towards the best result. It will always be a balance.



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How we can help?

No matter what stage you are at in your real estate investment lifecycle, we have experts that can assist you:

- establish your investment trust structure;
- negotiate the terms of your purchase or sale contract;
- complete your purchase or sale (conveyance);
- prepare options and joint venture agreements; and
- guide you through the property development process.

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Contact Us

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Also catch up with us via the Weekly Webinar Series (details can be found on the Members' Website).

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