

Personal Property Securities Update

Thursday, 17th November 2011

9.30 am - 1.00 pm

Many lawyers still have no idea what the Personal Property Securities legislation is all about nor what impact it will have on their practice. This is surprising because the PPS Act changes fundamental concepts regarding ownership rights and priorities for everything but land. Failure to address its impact is inviting a professional negligence claim. Don't be the first test case!

The first part of this seminar will review the basic elements of the new regime, including the meaning of key terms such as security agreement, security interests, deemed security interests, attachment and the four types of perfection available.

There will also be an analysis of other key terms such as the registration time and the migration time, collateral and how the PPS applies differently to different types of personal property, including goods, financial property, intermediated securities and intangible property.

We will also look at proceeds, PMSIs, PPS leases, flawed asset arrangements, as well as the basic priority rules and the default priority rules. Examples will be given and discussed.

The practicalities of the PPS register will be discussed. We will also see how innocent transferees are treated. We will also look specifically at the PPS concepts as they apply to leasing and analyse case studies.

The second part of the seminar will consider how the PPS changes corporations law, with an emphasis on its impact on insolvency law and practice as well as receiverships. This will include a discussion of applicable definitions such as circulating assets and how the new law affects the obligations of liquidators and receivers. There will be a discussion on how an existing security interest will continue and what its effect will be.

We will also visit section 275 of the PPS and other relevant sections, rights of set-off and situations where third parties do not obtain good title clear of any security interest.

We will see how the preferential payment provisions of the Corporations Act have been changed. The impact of the PPS on retention of title property, financing terms, factoring, negative pledges, the transfer of accounts, dealings in transferred collateral and confidentiality provisions will be considered.

The PPS enforcement provisions will be discussed and examples applied. We will see why there are no enforcement provisions applicable to deemed security interests.

The third part of the seminar will look at the transitional provisions and how the two systems will operate in tandem for the next two years, with a discussion of the priority rules which will apply during that period. Worked examples will be given. We will see why it is a mistake to ignore the legislation during the transitional period.

We will also discuss the impact of the legislation on land transactions. This will be particularly interesting, because the legislation expressly excludes land. The presentation will include mortgaged-backed securities, water rights, licences, fixtures, crops and livestock and the priority rules relating to them.

 **MCLE field:**
Substantive Law 3.25 units

About the Presenter

The presenter at this seminar will be Leigh Adams. Leigh has been practising in insolvency law for over 15 years. He is a former representative of ASIC's Regional Insolvency Liaison Group and he has written a book "When the Going Gets Tough" which deals with crisis management for business.

www.cpd.com.au

Property Transactions and the Australian Consumer Law

Thursday, 17th November 2011

2.00 pm - 5.15 pm

The Australian Consumer Law is now in full swing. It is more than just a re-enactment of the consumer protection provisions of the Trade Practices Act. It is wider in application and scope, and contains important new measures.

The Australian Consumer Law is destined to have a major effect on property transactions, including the sale of land, mortgages and leases. It will be important not only for consumers, but also for developers, agents and lessors, (particularly the owners and managers of shopping centres) as well as for the vendors of private homes and units.

This seminar is intended to bring you up to speed on the Australian Consumer Law and its impact on property transactions.

It will examine the provisions of the law that will be familiar from the Trade Practices Act, highlighting where necessary the differences between the old and the new.

Of particular importance are:

- s18 (which reproduces s52 of the Trade Practices Act, prohibiting misleading and deceptive conduct)
- s30 (which reproduces s53A, relating to false or misleading representations in the sale of land)
- Part 2-2 - relating to unconscionable conduct

The new provisions of the Australian Consumer Law include, most significantly, Part 2-3, dealing with unfair terms in consumer contracts. It applies to "standard form" contracts, a term that will apply to the form of most contracts that effect property transactions.

It provides, simply, that unfair terms in consumer contracts are void. It has the potential to affect many provisions that are widely used in land sales contracts and consumer mortgages.

This seminar will also deal with remedies under the Australian Consumer Law, again emphasising where they vary from those under the Trade Practices Act and outlining what is new.

Topics covered in this seminar will include:

- The apportionment of liability and the reduction of damages for contributing fault on the part of the plaintiff
- Guidance on practical issues, such as the jurisdiction of courts and tribunals, and transitional provisions that determine whether the Trade Practices Act or the Australian Consumer Law applies to a particular set of circumstances

 **MCLE field:**
Substantive Law 3 units

About the Presenter

The presenter at this seminar will be David Murr SC. David obtained his law degree from the University of Queensland, where he also took an MA in Political Science. He was admitted to the Bar in Queensland in 1978 and in New South Wales in 1979. He practises in the areas of equity and commercial law generally, with particular emphasis on property law. He was appointed senior counsel in 1998.

www.cpd.com.au

MCLE Information

Mandatory Continuing Legal Education (MCLE)

The MCLE year begins on 1 April and ends on 31 March the following year. In each year, a practitioner in New South Wales who holds a practising certificate generally must complete a minimum of 10 MCLE units unless exempted. MCLE units can be attained through a variety of activities. Attending a CPDS seminar, practitioners will be able to claim 1 unit per hour of attendance (refreshment breaks not included).

Compulsory MCLE Units

There are three compulsory MCLE units:



Ethics and Professional Responsibility



Practice Management and Business Skills



Professional Skills

Practitioners must include at least one (1) MCLE unit in each of the above fields. Compulsory units count towards the annual unit requirement and are not an additional requirement.

The Legal Profession Act Regulations also require every three years that at least one MCLE unit must cover equal employment opportunity, discrimination and harassment, occupational health and safety law or employment law.

Seminars that qualify for this requirement are designed by CPDS as:



Regulation 176 Compulsory Requirement
EEO, Discrimination, Employment and OH&S

Seminars that do not include a compulsory field are usually designated by CPDS as:



Substantive Law

Enquiries

For all enquiries regarding application of MCLE units to individual seminars, please contact CPDS.

The above is provided for informational purposes and is based on information supplied by the Law Society of New South Wales at the time of publication. Practitioners should make their own enquiries before relying on the information supplied above.

www.cpd.com.au



- Personal Property Securities Update
- Aspects of Litigation for Owners Corporations
- 10 Urban Conveyancing Myths
- Property Transactions and the Australian Consumer Law

CPDS Seminars November 2011

Sydney
The Grace Hotel
77 York Street

10 Urban Conveyancing Myths

Thursday, 17th November 2011

9.30 am - 1.00 pm

This seminar will address the practical nuts and bolts issues of domestic or urban conveyancing which practitioners face every day.

The commercial pressures on practitioners to minimize conveyancing costs are substantial. The inevitable result is that there is little time or opportunity to revisit the drafting of your standard special conditions, or otherwise consider whether your long-standing precedents and practice habits are out of date.

The topics that will be discussed in this seminar will include:

- Vendor disclosure - including changes to the disclosure requirements since the 2005 Edition of Contract
- Warning Notices – smoke alarms, swimming pools and rights implied by law
- The *shelf life* for Section 149 Certificates. Is your s149 out of date?
- Special conditions dealing with reduced deposits - their effectiveness and recent cases illustrating the problems with such special conditions
- Notice to Complete – What needs to be in a Notice to Complete and when will the contract effectively be rescinded pursuant to a Notice?
- Penalty interest and how it relates to forfeiture of the deposit
- GST and ABNs - surprising examples of where GST or Withholding Tax applies
- The Agent's authority to fill in and exchange a contract whether at auction or private treaty

- Exchange of Contracts by facsimile or email – how valid is a contract exchanged by facsimile or email where there is no original signature in evidence? What are the requirements of "signing"?
- Capacity: death, insanity and bankruptcy – the repercussions on an exchanged contract and the effectiveness of common special conditions
- When should a buyer be let in under license and what is likely to go wrong?



MCLE field:
Substantive Law 3.25 units

About the Presenter

The presenter at this seminar will be Marilyn Filewood. Marilyn has been a Solicitor in general practice since 1977, practising extensively in conveyancing. Since 1999 she has been a Cost Assessor and is also a member of the Costs Review Panel. She has been a part-time teacher of law and in recent years has presented a number of seminars on the subjects of costing and conveyancing, with an emphasis on providing practical information which is of real use to practitioners.

Aspects of Litigation for Owners Corporations

Thursday, 17th November 2011

2.00 pm - 5.15 pm

A cursory glance at the daily court list in the Local, District, Supreme and Federal Magistrates courts will often reveal a strata plan as a party.

This seminar will examine various aspects of the *Strata Schemes Management Act* and regulations which relate to the process, rights and procedures to be followed when an owners corporation is a party to litigation.

The object of this seminar is to ensure that in any litigation involving an owners corporation, a practitioner knows and understands what the owners corporation's rights and obligations are.

The following topics will be covered in the seminar:

- A brief overview of the *Strata Schemes Management Act 1996*
- The jurisdiction of the Consumer, Trader and Tenancy Tribunal
- The procedure to be followed when an owners corporation engages in legal action
- Costs - what may be recovered, with an analysis of the Court of Appeal judgment in *Dimitriou*
- By-laws, how they operate and remedies for breaches
- The role of managing agents

At the end of the seminar practitioners should be able to:

- Navigate their way round the *Strata Schemes Management Act*
- Be able to advise clients on how to bring or defend a claim in the CTTT

- Be able to ensure that in any litigation with an owners corporation, they have complied with their statutory obligations
- Determine what costs may be recovered
- Advise on breach of by-laws and how to enforce or defend allegations of breach of by-laws
- Advise on the role of a managing agent, including how they are elected and what to do if they fail to perform



MCLE field:
Substantive Law 3 units

About the Presenter

The presenter at this seminar will be Allan Blank. Allan has recently returned to the Bar practising from Edmund Barton Chambers. In 2006, Allan left the Bar to take a position with KM Harkness solicitors, which subsequently merged with EH Tebbutt & Sons. It was while practising as a solicitor with KH Harkness that Allan was exposed to the ins and outs of strata title matters conducting matters on behalf of various strata managing agents in relation to residential and commercial properties throughout New South Wales. Allan practises in commercial, family and industrial law and, has some specialist knowledge in strata related litigation.

Allan has published articles for the Law Society Journal NSW on aspects of cost recovery for lawyers and strata related issues.

Registration Form & Tax Invoice

Please Register me for:

- Personal Property Securities Update
- Property Transactions and the Australian Consumer Law
- 10 Urban Conveyancing Myths
- Aspects of Litigation for Owners Corporations

Registration Fees \$440 each seminar

Registration fees are inclusive of 10% GST. A tax invoice will be issued upon payment. Discounts are also available for early registration, online registration and group bookings – see below for details.

Name: _____

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Complete this registration form with your credit card details and fax it to: (03) 9328 4688 or post with cheque attached to:

CPDS
PO Box 598
North Melbourne, VIC 3051

Venue

Level 2 Conference Rooms
The Grace Hotel
77 York Street
Sydney

Discounts

A discounted registration fee of \$395 is available for all fully paid registrations received at least 30 days prior to the date of the seminar. A group discount of 10% off the full registration fee is offered for bookings of three or more persons from the same firm. Please send all registrations together clearly labelled "group booking". A discounted registration fee of \$395 is also available for all online registrations. You can search and register for all CPDS seminars at www.cpd.com.au. Only one discount category can be claimed for each registration.

Cancellations

Registrations may be cancelled up to 14 days prior to the seminar or workshop and a refund will be provided but an administrative fee of \$44 will be deducted. No refunds will be available within 14 days of the seminar or workshop. Should a seminar or workshop be cancelled by CPDS for any reason, a full refund of all fees paid will be made. CPDS reserves the right to cancel or reschedule courses, and to change speakers or revise content as necessary.

Mandatory CPD Schemes

If this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you should claim one "unit" for each hour of attendance, refreshment breaks not included. Further Information is provided on the back of this brochure.

Enquiries

For all enquiries regarding the course content or registration: Continuing Professional Development Seminars
ABN 17 126 054 466
Postal Address: PO Box 598, North Melbourne, VIC 3051
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