

scoops

entertaining the law



Dequetteville Chambers
1 Dequetteville Terrace
Kent Town South Australia 5067
phone +61 8 8132 5000
facsimile +61 8 8363 1633
admin@baggiolegal.com.au



Transferring the Buck! - The new electronic land conveyancing regime

When acquiring any property, you should always consider the associated entity structure, tax and succession implications.

Are you acquiring the property in the most effective and secure legal and tax structure for now and the future?

Is your current succession planning adequate to deal with the property on your death or TPD?

In most cases, it is easier and cheaper to organise these things from the outset, rather than down the road.

If you would like any entity structure, taxation or succession planning advice surrounding the acquisition of a property, we are here to help!

On 4 July 2016, the State Government introduced the new electronic land conveyancing regime into South Australia.

The New Regime has been advertised as a safer, cost effective and more efficient procedure for conveyancing; however, for most clients, all they will notice is more expense and more complexity.

Conveyancing is not form filling. Conveyancing involves legal transactions with attendant risk and consequences. There can be no shortcuts.

Clients and their advisers are really only just twigging to the changes.

It is important to note that the New Regime applies to all land transactions. Even 'internal' ones like changes in trustees, in-specie distributions etc. It applies to registered leases and mortgages also.

What's changed?

As part of the New Regime, a number of significant changes have been made including:

- 1 green duplicate certificates of title have been replaced with an entirely electronic database and the LTO will no longer issue duplicate certificates;
- 2 conveyancers/ legal practitioners now sign LTO forms on behalf of their client(s) and can lodge them electronically or in person; and
- 3 a number of the LTO's previous responsibilities have been passed on to conveyancers/ legal practitioners.



Andrew Baggio
LLB MTax BA GCLP FTIA

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Consequences of change

Under the New Regime, a conveyancer/ legal practitioner must now attend to the following regulatory requirements in addition to the general conveyancing procedure:

- 1 prepare and obtain a written authorisation from the client in relation to signing LTO forms on the client's behalf;
- 2 conduct a face to face meeting with the client to verify identity and inspect supporting documents (e.g. driver's licence, passport, birth certificate);
- 3 verify a client's authority to enter into the conveyance and inspect supporting documents (e.g. contract of sale, rates notices, ASIC searches, trust deeds);
- 4 retain evidence of the above items for the period prescribed by law; and
- 5 certify on the LTO form that the above items have been performed/ satisfied by the conveyancer/ legal practitioner.

These regulatory requirements are mandatory. They are not administrative or menial. They are not form filling. They require a conveyancer/ legal practitioner. There is considerable personal liability if they are not followed.

With a greater workload and risk involved, the costs for a conveyancer/ legal practitioner have naturally increased. Unfortunately, but not surprisingly, the regulatory costs such as stamp duty and LTO fees have not decreased despite this more 'efficient' system.

This is the brave new world of land conveyancing.

CGT Withholding Scheme

In addition to the New Regime, a foreign resident CGT withholding scheme has been introduced for the acquisition of a property worth \$750,000 or more. The CGT Withholding Scheme is complicated and legal/ taxation advice should be sought wherever there is the potential acquisition of property worth \$750,000 or more.

The CGT Withholding Scheme applies to any acquisition of property worth \$750,000 or more regardless of whether any consideration is paid (e.g. it can apply to a gift, matrimonial property settlement, estate distribution and in-specie trust distribution).

Generally speaking, under the CGT Withholding Scheme, the purchaser/ transferee must withhold and pay part of the purchase price/ market value (generally 12.5%) to the Commissioner of Taxation unless they are provided with a clearance certificate from the vendor/ transferor prior to the acquisition. These clearance certificates can only be attained by non-foreign residents.

The CGT Withholding Scheme applies regardless of whether the transacting parties are foreign residents or non-foreign residents. It must therefore be considered and complied with in *all* cases.

The consequences of not complying with the CGT Withholding Scheme are considerable. They can include penalties equal to the amount required to be paid (e.g. 12.5% of the purchase price/ market value) and further penalty units.

Even in a best-case scenario where a client has not complied with the CGT Withholding Scheme but otherwise has recourse from the vendor/ transferee for any money that must be paid to the Commissioner, it would still result in a major cashflow problem (in the hundreds of thousands of dollars) for most clients.

If you or your clients require any further advice in relation to any of the above,

please do not hesitate to contact us.