

Anita Rumba, Property Law Specialist

Anita Rumba, is an Accredited Property Law Specialist with the Law Institute of Victoria. Anita is able to advise clients in respect of all aspects of commercial, retail and industrial properties. We offer advice on leasing, conveyancing, planning and development, building and construction, owners corporations and property disputes.



Anita Rumba
**Accredited Property
Law Specialist**

arumba@armstronglawyers.com.au

New Property Law developments

Purchasers, Vendors and property developers should be wary of changes affecting:

- ▶ off the plan contracts;
- ▶ deposits;
- ▶ cooling off periods;
- ▶ notice of retail leases;
- ▶ cost of complying with essential safety measures; and
- ▶ planning reform proposals.

New developments

Off the plan contracts

The *Sale of Land Act* has been amended to require a notice to purchasers of off the plan properties. From 1 December 2012 off the plan contracts require a conspicuous notice as follows:

- ▶ the Purchaser may negotiate with the Vendor about the amount of deposit moneys payable under the Contract up to 10% of the purchase price;
- ▶ a substantial period of time may elapse between the day on which the Purchaser signs the Contract of Sale and the day on which the Purchaser becomes the registered proprietor of the lot; and
- ▶ the value of the lot may change between the day on which the Purchaser signs the Contract of Sale and the day on which the Purchaser becomes the registered proprietor.

The notice requirement highlights one of the major difficulties with purchasing off the plan.

For example, a contract may provide for 2 to 3 years for registration of a plan of subdivision during which time the value of the property may have decreased substantially, making it difficult to obtain finance to complete settlement. A reduction in value will not give the Purchaser grounds to terminate an off the plan contract.



Deposits

Deposits can no longer be held in the joint names of the purchaser and vendor in a special purpose trust account. Instead, deposits must be held by legal practitioners, conveyancers or licensed estate agents, on trust for the purchaser until registration of the plan of subdivision. Legal practitioners are still able to invest deposits in interest bearing accounts.

Cooling off period

Purchasers who obtain independent legal advice in relation to a purchase prior to entering into a contract no longer lose their right to the 3 day cooling off period to cancel a contract of sale of real estate.

The other exemptions to the cooling off period will continue to apply. For example:

- ▶ if the Purchaser is a company; and
- ▶ if the land is sold at auction or within 3 business days before or after an auction.

Property developers

Property developers need to ensure that all contracts of sale are updated to:

- ▶ include the new warning notice;
- ▶ remove any conditions allowing the holding of deposits in special purpose trust accounts; and
- ▶ amend the cooling off period notice.

Notice of retail leases

Following the repeal of Section 25 of the *Retail Leases Act 2003* (as at 21 November 2012) Landlords are no longer required to give notice of a new or renewed retail lease to the Small Business Commissioner.

The former notification requirement was seen as unnecessary and redundant and its removal has reduced the red tape and costs imposed on Landlords.



Cost of complying with essential safety measures

Under the *Building Act 1993* and the *Building Regulations*, Landlords have an obligation to comply with certain essential safety measures.

It has been submitted that under a properly drawn lease, a Landlord can pass on to the Tenant the costs of the Landlord complying with the *Building Act* and *Regulations*, including essential safety measures requirements.

In respect of retail leases, section 41(1) of the *Retail Leases Act 2003* renders void a provision in a retail premises lease to the extent that it requires the Tenant to pay an amount in respect of "capital costs". However, a provision in a lease that requires a Tenant to undertake "capital works" at the Tenant's own cost is not void.

It has been put forward that a Landlord of retail premises can recover non-capital outgoings from the Tenant, including the cost of the Landlord complying with its obligations under the *Building Act*.



Planning reform proposals

In July 2012, the President of the Victorian Civil and Administrative Tribunal (VCAT), Justice Greg Garde, proposed potential reforms including:

- ▶ allowing VCAT directed permits to be amended by responsible authorities;
- ▶ extending the time limit for councils to decide on complex permit applications; and
- ▶ making the power to extend permits co-extensive as between responsible authorities and VCAT.

Further, in February 2013, amendments were proposed to the current Business zones to create development opportunities. The proposed changes include:

- ▶ consolidating Business 1, Business 2 and Business 5 zones into a new Commercial 1 zone focused on mixed use, retail commercial and high density residential development;
- ▶ consolidating Business 3 and Business 4 zones into a new Commercial 2 zone focused on commercial and light industry uses; and
- ▶ amendments to the mixed use zone.

In addition, the reform proposals in December 2012 also contemplate 3 new residential zones, being:

- ▶ Residential Growth Zone for medium density housing;
- ▶ General Residential Zone to encourage development that respects neighbourhood character; and
- ▶ Neighbourhood Residential Zone that restricts housing growth in areas identified for urban preservation.

On 5 March 2013, the Planning Minister, Mr Matthew Guy, announced that the 3 new residential zones will be introduced on 1 July 2013.



Our Lawyers



Russell Armstrong

LL.B., B.Ec., MBA (DUKE)

Russell Armstrong's 20 year legal career has provided him with extensive commercial law and commercial litigation experience. Russell previously worked as a taxation manager at KPMG providing advice to Australia's largest public companies, Russell is able to quickly understand the creative and pro-active commercial thinking of his clients.



Greg Thomas

LL.B., BCom (Melb)

Greg Thomas is a commercial lawyer with more than 30 years experience. As a commercial lawyer, Greg has a broad practice including the drafting and negotiating of a wide variety of commercial agreements. Greg has a particular expertise in advising clients in respect of franchising law.



Anita Rumba

B.A., LL.B., B. Litt., Accredited Property Law Specialist

Anita Rumba is a property lawyer with more than 25 years experience. Anita has a broad range of property experience with some of Melbourne's most prominent legal firms, having acted for private clients and financial institutions.



Frank Gianarelli

LL.B., BCom (Melb), Accredited Wills and Estates Specialist

Frank Gianarelli is a Wills and Estates lawyer with more than 37 years experience. Frank has extensively practised in Estate and succession planning, including advice on self managed superannuation funds, trusts and companies.



Lizia Lim

LL.B. (Hons), B. Arts (Melb)

Lizia was admitted to practice in 2007 after graduating from the University of Melbourne with a combined Arts/Law degree. Lizia is experienced in Wills and Estates, including Estate litigation involving claims for inadequate provision and invalid Wills.



Christopher Chin

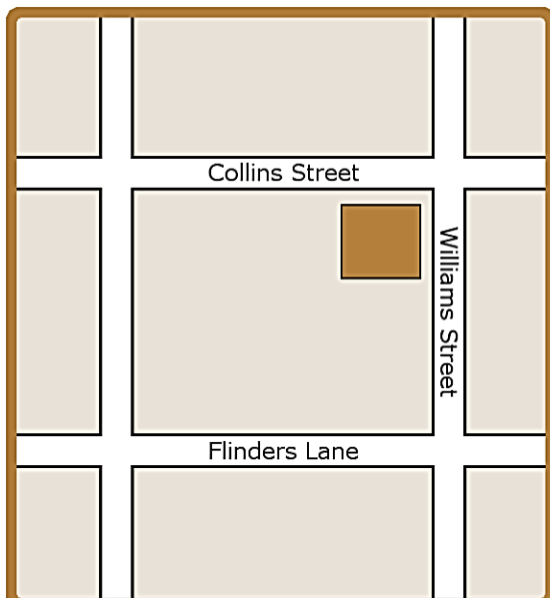
LL.B. (Hons), BCom (Melb)

Chris was admitted as a solicitor in March 2013 having completed his double degree at the University of Melbourne and undertaking his traineeship at Armstrong Lawyers. Chris has been involved with a wide range of matters, including commercial law, commercial litigation, franchise and Wills and Estates matters.

Our Services

We provide advice on:

- ▶ Commercial Law
- ▶ Commercial Litigation
- ▶ Employment
- ▶ Franchising
- ▶ Insolvency & Bankruptcy
- ▶ Property Law
- ▶ Wills and Estates



OFFICE Level 7, North Tower
459 Collins Street
Melbourne VIC 3000

PHONE 1300 724 395

FAX (+613) 9629 5744

EMAIL office@armstronglawyers.com.au

WEBSITE www.armstronglawyers.com.au

POSTAL PO Box 394, Collins Street West
Melbourne VIC 8007

Our normal business hours are between 9.00 am and 5.30 pm. You are welcome to initially telephone us to discuss a matter or make an appointment to meet with one of our lawyers.