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Property e-alert

The Standard Form Contract 2012 - change is never easy!

The 2012 revision of the Standard Form Contract has now been approved for use by the Law Society and REIT and if you have not already, it's time to familiarise yourself with the new document.

Change isn't always easy and tearing some fellow professionals away from the old form of contract can resemble the removal of a favourite blanket or mangy old teddy bear from a 3 year old. They don't call it a 'security blanket' for nothing.

It was interesting to note that a significant number of participants at the Property & Commercial Law Conference held in Hobart on 11 May 2012, are still using the 'old old' form (pre-2010).

Arguably, there were good reasons why the legal and real estate industries had not universally transitioned to the 2010 revised Contract.

The joint committee of the Law Society and the REIT received complaints that it was too long, complex and poorly drafted.

So, the 2012 revised Contract is now available for use and we at Hunt & Hunt encourage all those involved in the real estate industry in Tasmania to make the transition with us.

Here are a few reasons why:

- » **A two part Contract. Part 1**, The Particulars of Sale, are quite user friendly and straightforward to complete. **Part 2**, The Standard Conditions of Sale, may not be tampered with as the 2010 version could and often would be. If you intend to alter a Standard Condition then you must alert all parties to it by adding it as a Special Clause (contained in The Particulars). Additionally you can "strike-out" one of the Standard Conditions and have the parties initial the deletion; which

means that it will be obvious to all who see the Contract.

- » **4 pages of Standard Conditions.** So brief, you could almost fit it on the back of a cigarette packet.
- » **One place to sign.** Execution is at the end of the Particulars and will do away with the common practice of signing each and every page.
- » **Industry standard.** Unlike the 2010 version, we believe this Contract will become the industry standard and if you are not using it, you will probably be asked; how come?

We have recognised some potential weaknesses with the new Standard Form, which may only be weaknesses depending upon who you act for. Given the purpose of any standard form is intended to provide a fair balance between the rights of the contracting parties, the weaknesses are perhaps excusable.

We have noted a couple of these perceived weaknesses below, but we stress that you keep in mind that these special clauses contained in The Particulars section, are not actually part of the 'Standard Conditions', merely suggestions, and so can be amended with little hassle.

Building Inspection Report – one per centers!

"One per centers" was once just a term coined and universally loved by footy coaches. Now it seems it can be a saving grace for a purchaser who is less than keen to proceed.

The 2010 inspection clause permitted a purchaser to terminate the Contract where the cost of remedying a building defect was likely to exceed one per cent of the sale price. There were two issues with this provision; firstly, is a building defect just structural or could it extend to a squeaky door and a jammed window, and secondly, one per cent is far too easily reached.

Well, the new form holds onto the one per cent threshold, but does try to clarify the building defect confusion.

The description of a building defect has now been scrapped and instead the new Form states; "structural, safety, electrical, plumbing or roofing defects".

While this does seek to clarify a defect, it does beg the question of whether a purchaser should seek not just a building inspection, but also an inspection by a plumber and electrician? A building inspector will not provide a plumbing and/or electrical report.

Shorter Period Clause

Previously known as the "48 hour" provision, the new Standard Form Contract has reworked this provision for when a vendor may shorten the time for a purchaser to satisfy a contract pre-condition (ie subject to finance or sale of the purchaser's property).

The vendor no longer needs to have a particular reason for shortening the conditional period to two days, which makes us wonder whether the Tasmanian real estate industry is opening itself up to the unsavoury practice of "gazumping". We recommend that this special provision is only used with care.

GST

This Contract doesn't actually deal with GST, other than to elect whether or not the sale is a taxable supply. If it is a taxable supply then the parties are required to add their own special clause to the Contract.

We recommend that where the payment of GST is an issue, the Contract is passed back to the vendor's solicitor or conveyancer for amendment.

There really isn't any need for estate agents to wade into the murky world of GST – do your PI insurer a favour and leave it to the solicitor who really should know how to deal with GST appropriately.

While this Contract is not perfect, we don't believe such a "perfect" document actually exists in any jurisdiction. This is, however, a big improvement on the 2010 form and should be embraced and replace the old and now slightly smelly earlier versions. This can be your new security blanket!

So please, familiarise yourself with the new Contract as we believe you will be pleasantly surprised by how straight forward it is.

It really does have the feel of the old contract, it just smells a little fresher. Who knows, you may even learn to like it!

We are more than happy to discuss any concerns you have with the new form or even drop in to run through it with you and your office.