

Update: 19 September 2007 Caveats, final searches & writs



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Solicitors



Summary

A recent decision of the High Court of Australia has raised concerns for purchasers and their legal practitioners.

What's changed?

The effect of the High Court decision is that if (for example) a Writ or other "encumbrance" is lodged on the title to a property being purchased, *after* settlement but *before* registration by a purchaser's bank of the transfer into their name, then that Writ or "encumbrance" will have priority over the registration of the transfer into the purchaser's name. This could lead to serious consequences to a purchaser.

What are the benefits?

We believe the only way to protect our purchaser clients is to lodge a Caveat (or "block") on the title immediately after exchange of Contracts.

If a Caveat has been lodged after an exchange of Contracts and a Writ or "encumbrance" is lodged after settlement of the purchase, but before registration of the transfer into the purchaser's name, it will not affect the Title transfer.

However, there is a cost involved and the decision whether or not to lodge a Caveat essentially becomes a commercial one for a purchaser.

What are the problems?

If purchasers do not wish to bear the expense of lodging a Caveat then they run the risk of an unforeseen (and perhaps unlikely) dealing being lodged against the title to the land they have purchased.

The unfortunate reality is that although purchasers are entitled to a clear title, this will be affected if the vendor has had business dealings or is in such a financial state that third parties lodge claims on his property. Banks are also often slow to register documents of transfer. It can often be two or three months between settlement of a purchase and the date that the transfer is lodged for registration. This means the risk of an adverse dealing being lodged increases with any delay in lodging the transfer.

How can Fleming Muntz help?

Fleming Muntz can assist you or your purchaser clients to answer any questions they may have regarding Caveats or any other conveyancing matter. Please contact us.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to fmlaw@flemingmuntz.com.au.

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